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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 HERMÈS INTERNATIONAL, et al.,

4 Plaintiffs,

5 v.

22 Civ. 384 (JSR)

6 MASON ROTHSCHILD,

7 Defendant.

8 -----x

New York, N.Y.
February 1, 2023
9:30 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge
13 -and a Jury-

14
15 APPEARANCES

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(Trial resumed; jury not present)

THE COURT: Let's get the witness on the stand. After reviewing are Dr. Kominers' report and considering the points made by defense counsel yesterday, I didn't think a hearing was necessary. I am going to allow him to testify, but I will state my reasons for that at the next break, so you will have the record.

MR. HARRIS: Your Honor, may I approach with binders?

THE COURT: Pardon?

MR. HARRIS: May I approach with binders?

THE COURT: Yes. How much longer are you going to be on direct?

MR. HARRIS: Ballpark, two hours, your Honor.

THE COURT: Approximately?

MR. HARRIS: Two hours.

THE COURT: I would suggest that it ought to be no more than two hours.

(Continued on next page)

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1 (Jury present)

2 SONNY ESTIVAL, resumed.

3 THE COURT: Please be seated.

4 Good morning, ladies and gentlemen.

5 Thank you very much for your promptness and we are
6 ready to proceed.

7 Counsel.

8 MR. HARRIS: Thank you, your Honor.

9 DIRECT EXAMINATION (Continued)

10 BY MR. HARRIS:

11 Q. Good morning, Mr. Rothschild.

12 A. Good morning.

13 Q. Mr. Rothschild, yesterday -- I just want to clarify one
14 thing. I asked you a question about Virgil Abloh, and you said
15 he recently had a show at the Whitney Museum.

16 A. I made a mistake. It was actually the Brooklyn museum.

17 Q. That was a show of his artistic works?

18 A. Yes, as well as some of his work in, like, designing
19 fashion, architecture as well.

20 THE COURT: Lean that microphone down a little bit.

21 Q. When we left off yesterday, Mr. Rothschild, we were
22 discussing your "Do Not Sit" project.

23 A. Yes.

24 MR. HARRIS: Ashley, could you please put back up
25 Exhibit 523 in evidence.

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1 BY MR. HARRIS:

2 Q. Mr. Rothschild, when we left off yesterday, I was asking
3 you if you created these images by yourself.

4 A. No.

5 Q. How were the images created?

6 A. I'm sorry. I couldn't hear you.

7 Q. Sure. How were the images created?

8 A. The images were created in a 3D program called Houdini by
9 my assistant, Mark.

10 Q. What is mark's name?

11 A. Mark Berden.

12 Q. Does he work for you or is he a freelancer?

13 A. A freelancer.

14 Q. How did you meet Mr. Berden?

15 A. I met Mark through, like, a freelance website. He had a
16 portfolio of other 3D works that he did.

17 Q. What was Mr. Burden's role in the creation of the images?

18 A. Pretty much to simulate these 3D images at my direction.
19 So I would come up with the concept, the subject matter,
20 composition, materials used, and he could kind of execute on
21 those.

22 Q. In your experience does, hiring others to help execute an
23 art project something that artists sometimes do?

24 A. Yes. I mean, to my knowledge, my favorite artists
25 personally all have, like, massive teams.

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1 Q. These teams have helped them execute projects?

2 A. Yeah. Like in the case of Damien Hirst, his most famous
3 paintings that sell for millions of dollars are done by, like,
4 assistants drawing circles.

5 Q. Did you pay Mr. Berden?

6 A. Yes.

7 Q. Now, did there come a time when you began to work on a
8 project called "Baby Birkin"?

9 A. Yes.

10 Q. All right.

11 MR. HARRIS: Ashley, could you please put up Exhibit
12 82 in evidence. Ashley, it's in evidence. You can publish it
13 to the jury as well.

14 Thank you.

15 BY MR. HARRIS:

16 Q. We saw this video yesterday?

17 A. Uh-huh.

18 Q. What was the idea behind the Baby Birkin project?

19 A. It's mostly a play on words, you know, a baby in Birkin.
20 The Baby Birkin was, like, really popular in pop culture at the
21 time because like the Kardashians kept wearing it and it was
22 the most popular size. It's the smaller size, so people tend
23 to like the smaller handbags. And it was like all over music I
24 remember, like, a Gunna song. Specifically it was called Baby
25 Birkin, I kept hearing it all the time and the idea kind of

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1 came to my head.

2 Q. Was Baby Birkin done as an NFT?

3 A. Yes.

4 Q. And did you have any artistic influences for this project?

5 A. Specifically for Baby Birkin, I kind of just, like, the
6 baby itself gestating in the bag is one thing, but the kind of
7 clouded thing that you see around that was -- and you kind of
8 see these little specks all over, there's like a famous, like,
9 Hubble space photo of, like, the creation of a star. It kind
10 of looks like that. It's something being born, a star being
11 born. I put those two together.

12 Q. Did you work with anyone on the Baby Birkin project?

13 A. So I collaborated with my buddy Eric Ramirez, who's been my
14 friend since like childhood, and then Mark as well.

15 Q. And when you say Mark, that's Mr. Berden?

16 A. Correct.

17 Q. What was your role on the project?

18 A. I came up with the concept completely. The Baby Birkin was
19 just kind of the idea I came up with just from seeing it all
20 the time, hearing it in music, and then I kind of reached out
21 to Eric because Eric is known for, like, painting the handbags
22 and luggage of like famous people. He painted Chris Jenner's
23 stuff he paints on luxury goods like Goyard, Louis Vuitton,
24 even he's painted on Birkins in the past. I felt like it was a
25 match made in heaven to work on a project.

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1 Q. When you say Eric paints on a Birkin bag, if I buy a Birkin
2 bag, I can take it to Mr. Ramirez and he'll point a picture on
3 it?

4 A. Yeah, whatever you want.

5 Q. And did you make efforts to promote the Baby Birkin
6 project?

7 A. Yes.

8 Q. What kind of efforts did you make?

9 A. One we released it on Basic.Space, which is a marketplace
10 for artists, creators, influencers, to kind of, you know,
11 showcase what they want to sell, whether it's art -- some of
12 them have clothing, some have furniture they make. So together
13 we had, like, a marketing effort to get it out there.

14 Q. And is that something in your experience that artists
15 typically do?

16 A. For sure.

17 Q. And did the Baby Birkin NFT sell?

18 A. Yes, it was like a five-day auction I think, and the closed
19 price was \$23,500 equivalent in Ethereum.

20 Q. Did the project receive any press?

21 A. Yes.

22 Q. Do you recall where?

23 A. Vogue was probably one of the biggest ones, it made the
24 rounds. I don't remember every single press story, but I think
25 it hit like 15, 20 different, you know, websites.

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1 Q. Did there come a time when you started working on a project
2 called MetaBirkins?

3 A. Yes.

4 Q. About when was that?

5 A. That was -- so, the idea for MetaBirkins kind of came -- I
6 didn't know what I was going to do after Baby Birkin. I think
7 it was in September when Kering Group announced that they were
8 going fur free with a big press release that made the rounds in
9 every single website, whether it was business or art or
10 fashion.

11 And then the lightbulb went off. Since they are going
12 fur free, I was like, oh, this is a cool opportunity to make
13 fur bags that don't, you know, utilize fur from animals or
14 killed animals since they are digital.

15 Q. Who is the Kering Group or what is the carrying group?

16 A. Kering Group is like a fashion conglomerate. They own
17 Saint Laurent, who I worked for in the past, Balenciaga,
18 Alexander McQueen and, like, I don't know, five to seven other
19 brands.

20 Q. Do they own Gucci, do you know?

21 A. Yes.

22 Q. And, I'm sorry, the Kering Group put out a press release
23 saying what?

24 A. At the time you know, luxury companies were kind of getting
25 scrutinized for their use of fur products or just like skins or

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1 hides that were, like, hard to kind of obtain and don't come as
2 a product of, like, the meat industry. So they made a
3 commitment to no longer use fur in any of their products for
4 the whole umbrella of companies.

5 Q. Were you aware of any similar statement from Hermès?

6 A. No.

7 Q. What is your understanding of a conceptual artist,
8 Mr. Rothschild?

9 A. Kind of in the way that you speak, I spoke about the
10 concept stores yesterday, a conceptual artist I feel like
11 doesn't use traditional means of, you know, creating the art or
12 promoting art to get it out there. You know, it's, when I
13 create something it's kinds of like, you know, a shot in the
14 dark. It's definitely something that is in my head. It is an
15 idea in its purest form, and I try to put it on paper.

16 Q. Do you consider yourself a conceptual artist?

17 A. I like to think so, yes.

18 Q. Do you consider -- what type of project do you consider
19 MetaBirkins?

20 A. I think it is a conceptual art project.

21 Q. Why did you consider it a conceptual art project?

22 A. One, that kind of concept, it's not like we are using
23 traditional means to create it, you know, we are using, you
24 know, 3D software. Every single like fiber is like simulated
25 within the 3D software so every singing -- it's not like

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1 Photoshop, where you just like overlay something. Every single
2 one of those, like, furs is the color it is a supposed to be.
3 The way we sold it, you know, utilizing NFTs which was kind of
4 new and innovative technology at the time we utilized it to
5 sell art and it was just a vehicle for it.

6 THE COURT: So now I think, forgive me, you are a
7 little too close to the microphone. Just a little bit back.
8 That's good.

9 MR. HARRIS: Can we -- we are going to put up, please,
10 Ashley, Exhibit 227, which is in evidence.

11 BY MR. HARRIS:

12 Q. That, Mr. Rothschild, is the MetaBirkins website, is that
13 right?

14 A. Correct.

15 Q. I believe there is a date on this, which I may not be able
16 to see because my screen is a little fuzzy. I see, "Access
17 December 1, 2021."

18 Do you see that up in the upper right-hand corner?

19 A. Yes.

20 Q. Okay. When were the MetaBirkins themselves released?

21 A. Like for sale? Like, when you could buy them was December
22 2.

23 Q. Okay. So this is up before the MetaBirkins are actually
24 for sale?

25 A. Yeah.

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1 Q. This is metabirkin.com, is that right?

2 A. Yeah, metabirkins.com.

3 Q. Is that a website that you set up?

4 A. Yes. I own the domain and I designed the website.

5 Q. And you registered the domain?

6 A. Correct.

7 Q. Is there anything on this page -- again, it is just a
8 little blurry, but is there anything on this page indicating
9 that you are the creator of MetaBirkins?

10 A. Yes. It's says creator Mason Rothschild.

11 Q. Where do I find that?

12 A. The second paragraph it says creator Mason Rothschild began
13 working on MetaBirkins shortly after the success of Baby
14 Birkin.

15 Q. And is there anything on this web page indicating that
16 Hermès was the source of the MetaBirkins?

17 A. Not to me. I said it was a tribute to Hermès, but never
18 said it was a collaborative artwork.

19 Q. Were you interested in taking credit for the MetaBirkins
20 project?

21 A. Yes, for sure.

22 Q. Does this web page show -- by the way have you ever used
23 metabirkins.com for anything other than promoting the
24 MetaBirkins?

25 A. No.

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1 Q. Have you ever offered to sell metabirkins.com to anyone?

2 A. No.

3 Q. Now, were you also previewing the images --

4 MR. HARRIS: By the way could you put that back up for
5 one second, please, Ashley.

6 Thank you.

7 If we could see the one that's broader, if we could
8 scroll down a little.

9 BY MR. HARRIS:

10 Q. Was this a preview of all 100 images?

11 A. No, these are just kind of my favorites.

12 Q. So if you take a look at these, let's take a look -- could
13 you -- is there any one of these that you would care to explain
14 to the jury what your thought process was behind it.

15 A. The second row, the second one next to the really bright
16 colorful one is actually a Bob Ross inspired one.

17 Q. Okay. That's the second from the right?

18 A. Yeah. The second from the right.

19 Q. The second from the right. Who is Bob Ross?

20 A. Bob Ross is a painter. He's known for like the happy
21 little clouds and stuff like that, has the big afro.

22 Q. Now, did you review these images at other places?

23 A. Yes. On Discord, which was where the majority of
24 communications went on for MetaBirkins.

25 Q. What is Discord?

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1 A. Discord is a chat platform, kind of like an Instant
2 Messenger or a Facebook Messenger where you can talk in, like,
3 big about groups of people. It was initially started for,
4 like, gamers to talk to each other and it became, like, a
5 resource for people to promote our projects in Web 3.

6 Q. Did you also put it up on your Instagram?

7 A. Yes. And Twitter.

8 MR. HARRIS: Ashley, this is for identification so
9 could you please show the witness and Court and counsel
10 Defendant's Exhibit 506 for identification.

11 Okay.

12 BY MR. HARRIS:

13 Q. Can you just briefly explain what this is.

14 A. This is the MetaBirkins Instagram.

15 Q. Is this a site you created?

16 A. Yes.

17 MR. HARRIS: Your Honor, I offer Defense Exhibit 506.

18 MR. WARSHAVSKY: No objection.

19 THE COURT: Received.

20 (Defendant's Exhibit 506 received in evidence)

21 MR. HARRIS: Please publish it, Ashley.

22 BY MR. HARRIS:

23 Q. This is an Instagram site that you created for MetaBirkins?

24 A. Correct.

25 Q. And do you also have a separate Instagram, personal

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1 Instagram site?

2 A. Yes. It's @MasonRothschild.

3 Q. You previewed -- am I right that you previewed the
4 MetaBirkins on this Instagram site?

5 A. This one as well as my own, like, I would repost them as
6 stories and I posted a few just, like, on my feed.

7 Q. Did you create these images that we are looking at here by
8 yourself?

9 A. No.

10 Q. How were they created?

11 A. In tandem with Mark.

12 Q. What was your role and what was Mr. Berden's role?

13 A. Just like all the other projects, I come up with the
14 concept, the composition, all the artwork that goes, or that
15 you see on the MetaBirkins, and then he just simulates them.

16 Q. You say he simulates them. What do you mean by that?

17 A. So when we created MetaBirkins, we have this kind of, you
18 know, the general shape of it, and what we do is we simulate
19 the fur, so it's not just like an overlay or anything like
20 that, but, like, you can kind of see how every kind of fur has,
21 like, color attached to it. So in the 3D space there is actual
22 like fur fibers.

23 Q. As opposed to just having the fur be like one color and
24 then coloring it?

25 A. Correct.

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1 Q. Did I get that right?

2 A. Correct.

3 Q. Okay. Now, if you scroll down in the Instagram, did there
4 come a time when you shrouded --

5 MR. HARRIS: There it is, scroll up.

6 BY MR. HARRIS:

7 Q. Did there come a time when you shrouded the image?

8 Do you see that shrouded image?

9 A. Yes.

10 Q. Can you tell me when that came about and how.

11 A. So, the shroud, it's popular in for NFT projects to not
12 reveal the artwork until a certain date. It's kind of like
13 when you get something and we don't want to give the impression
14 that the -- it's predetermined like what you will get. So
15 especially when there's like ones that people want and there's
16 more in demand than others, like Mona Lisa, for example, or Bob
17 Ross, it's kind of just a way of randomizing the artwork prior
18 to people receiving it.

19 Q. So, when you put the MetaBirkins up for sale, what -- if
20 somebody was -- did they put in a bid for one or how does that
21 work?

22 A. So, no. Everybody who was able to purchase or mint a
23 MetaBirkin for the first time was on a white list or friends
24 and family.

25 Q. What is a white list?

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1 A. A white list is basically like a ticket to purchase. So
2 since you have everybody's wallet addresses, anybody who you
3 have that's on the white list is able to mint versus any other
4 person. So it's like a doorman.

5 Q. How does somebody get on the white list?

6 A. There's various different ways. One of the ways was I held
7 contests within the Discord for people to kind of, you know,
8 create their own, like, fan art. I guess you could say I would
9 pick the best ones and say, okay, you get the chance to
10 purchase a MetaBirkin.

11 We also did, we had people donate to different animal
12 shelters. If you donated to an animal shelter, you would get
13 on a white list. There's, I think I ran like 10, 20 different
14 contests.

15 Q. If you're on a white list -- there were a hundred images,
16 is that right?

17 A. Correct.

18 Q. You previewed some of them but not all 100, is that also
19 right?

20 A. I would say about 90 percent were previewed.

21 Q. So if somebody is on the white list, do they know which
22 image they are going to get?

23 A. No.

24 Q. And how do you determine who gets what image?

25 A. It's fully randomized.

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1 Q. When you are creating your white list, you also make an
2 effort to make sure or try to get folks who you might think
3 would be important collectors or influencers on the white list?

4 A. Sure. Just like traditional art, you would want your art
5 to go to the best galleries or the best sculptors.

6 MR. WARSHAVSKY: Objection, your Honor.

7 THE COURT: Well, sustained as to form.

8 BY MR. HARRIS:

9 Q. Do you make an effort, when you are creating the white
10 list, do you make an effort to get anybody on that white list?

11 A. Yes. I try to get it in the hands of good collectors.

12 Q. Why would that be?

13 A. Good collectors have kind of a pedigree for collecting in
14 this space. So people who are known collectors of different
15 artworks, you know, utilizing NFTs, friends and family and
16 celebrities who have a big influence on people.

17 Q. And when the folks purchased the MetaBirkin, they then
18 received -- what did they actually receive?

19 A. Sorry. Can you repeat the question?

20 Q. Sure. They are on the white list, you are not sure which
21 one you are going receive, it's randomized, and then on what
22 day did you release the MetaBirkins?

23 A. So, I believe it was a day or two after where they were
24 revealed. So they would wait -- everybody had a shroud over
25 it, and then everybody knew when the reveal date was. They

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1 would check, we would push the randomization, like, script, and
2 it randomizes who gets what and you refresh your, like, page on
3 like OpenSea or something like that, and then you would see
4 what you got.

5 Q. Then you would have it?

6 A. Yeah. Then you would have it.

7 Q. How much did you sell the MetaBirkins for when they were
8 minting?

9 A. .1 Ethereum, which is the equivalent of like \$450.

10 Q. At the time?

11 A. At the time.

12 Q. The price of ether fluctuates?

13 A. Yes, significantly.

14 Q. Do you believe you could have sold them for more?

15 A. For sure. The demand was crazy, but that was part of the
16 experiment.

17 Q. When you say that was part of the experiment, what do you
18 mean by that?

19 A. I mean, Hermès Birkin bags are known to be sold for
20 \$12,000, you know, minimum of \$12,000, like they said. So I
21 said, let me see if I can charge, like, almost nothing for
22 them, like \$450, and see what the people do with them and see
23 what they value, is it the image or, like, the product.

24 Q. And did the MetaBirkins -- when you minted the MetaBirkins,
25 did you keep any for yourself?

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1 A. I kept one.

2 Q. And did the MetaBirkins jump up in value?

3 A. Yeah. The first one sold for the equivalent of \$45,000.

4 Q. When you say the first one, do you mean a resale?

5 A. The first resale was \$45,000.

6 Q. Do you receive that \$45,000?

7 A. I receive seven and a half percent.

8 Q. Why did you receive seven and a half percent?

9 A. As I said yesterday, you can set a royalty, which is what
10 made, like, NFTs very popular in the first place, which is the
11 artist is able to collect royalties. So anytime it gets
12 traded, I get a royalty on it.

13 (Continued on next page)

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1 BY MR. HARRIS:

2 Q. And did you sell the one that you had kept for yourself?

3 A. No, I still have it today.

4 Q. Ballpark guess, about how much money have you made from
5 resales of the MetaBirkins?

6 A. Um, I think 70,000.

7 Q. You're guessing?

8 A. Approximately, yeah. An estimate. It would be worth way
9 less today.

10 Q. Is that in addition to -- and then you also received
11 approximately \$45,000 when they were minted?

12 A. Correct. Like, I'd say 100, 10K at the time, um, but about
13 60 percent less now.

14 Q. Can I please show DX 614 for identification to the court,
15 counsel, please, and the witness.

16 Mr. Rothschild, this is a picture that Hermès counsel
17 used in its opening. Do you recognize what these are?

18 A. Yes.

19 Q. What is it?

20 A. Um, I can't count, but I think it's all the MetaBirkins or
21 close to it.

22 Q. The 100 that you minted?

23 A. The 100, yeah.

24 MR. HARRIS: Your Honor, I move DX 614.

25 MR. WARSHAVSKY: No objection.

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1 THE COURT: Received.

2 (Defendant's Exhibit 614 received in evidence)

3 Q. All right. We're going to move on from this.

4 Before we do, any others of these that you would like
5 to explain?

6 Pick one more out and explain what you are doing
7 artistically.

8 A. Let me see. There's a pretty recognizable one in the
9 second row. It's blue or, like, teal and purple. I really
10 like Disney and Monsters, Inc., so it's a take on Sully, who is
11 one of the characters in that movie.

12 Q. That's the one that is teal with the purple kind of what I
13 call polka dots?

14 A. Yeah, polka dots.

15 Q. OK. Thank you.

16 Do purchasers of the MetaBirkins receive 2D or 3D
17 images?

18 A. 2D.

19 Q. Now, you said before they were created with 3D technology
20 because you needed it for the fur, is that right?

21 A. Correct.

22 Q. So if it's created with 3D technology, why is it that the
23 purchasers receive a 2D image?

24 A. Because that is what we wanted to give people. I mean,
25 it's, like, taking a picture. If I took a picture of this,

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1 like, water bottle, it's a real physical three-dimensional
2 water bottle. But if it's a picture, it is two-dimensional,
3 you can't grab it or see behind it or anything.

4 Q. Can the owner of a MetaBirkins NFT print his or her
5 MetaBirkins with a 3D printer?

6 A. No.

7 Q. Can the owner of a MetaBirkins use his or her MetaBirkins
8 in the metaverse?

9 A. Um, no. I mean, they could put it on a wallet, like, a
10 painting, but that would be the extent of it.

11 Q. You can use it in the metaverse like a 2D image?

12 A. Yeah.

13 Q. In a metaverse, could an owner of a MetaBirkins use it like
14 a handbag?

15 A. No.

16 Q. Can they put things into it?

17 A. No.

18 Q. All right. And did the MetaBirkins project have any
19 relationship to the Do Not Sit project?

20 A. Just aside from it's a chair that you can't sit in or
21 handbag you can't put anything in.

22 Q. Now, how did you come to choose the title MetaBirkins for
23 the project?

24 A. Um, so, I ran out a contest, a common trend, I guess you
25 could say, to get attention to the project, people interacting

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Estival - Direct

1 with you on social media. So I ran a contest on Instagram and
2 Twitter, and the name was suggested.

3 Q. Was this before or after they were released?

4 A. Before.

5 Q. Can I please put up what's for identification Defendant's
6 Exhibit 613.

7 Can you briefly describe for the court what this is?

8 A. Um, it's an Instagram post of me, I think, on October 29,
9 2021, asking -- or saying the collection needs a name, share
10 this post, and comment your suggestion.

11 Q. And is this your personal Instagram or the MetaBirkins
12 Instagram?

13 A. This is mine, because it didn't have a name yet.

14 Q. OK. Got it.

15 MetaBirkins hadn't been created yet?

16 A. No.

17 Q. OK. And the *MetaBirkins.com* website hadn't been created?

18 A. Not yet.

19 MR. HARRIS: OK. Your Honor, I offer defense
20 Exhibit 613.

21 MR. WARSHAVSKY: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit 613 received in evidence)

24 Q. Do you see that on the black part or that's next to the
25 picture down in the bottom there's a date.

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Estival - Direct

1 Do you see that?

2 A. Yes.

3 Q. What is that date?

4 A. October 29, 2021.

5 Q. And up at the top, what are you doing here?

6 A. I'm just previewing one. This is, like, the caption of an
7 Instagram post saying what I'm doing. I said, I guess I knew
8 what the price was at the time -- at the time already and, um,
9 just asking people that it needs a name and for people to share
10 it.

11 Q. And did, in fact, people -- did you post it just on the
12 contest, just on Instagram, or did you also post it on other
13 social media?

14 A. I posted it on Twitter.

15 Q. And did somebody suggest names?

16 A. Yes. Actually, I got suggested MetaBirkins on Instagram
17 and on Twitter.

18 Q. If you look in the middle of this page, there's a
19 *hectourc* --

20 A. Correct.

21 Q. -- suggested MetaBirkins?

22 A. Yes.

23 Q. Did the contest -- you said there were two, there was
24 somebody on Instagram and also someone on Twitter.

25 Do you remember the name of the person that suggested

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1 it on Twitter?

2 A. Makisa. Her handle is *asiancryptogirl*.

3 Q. Do you know her actual name?

4 A. Makisa. That's just her display name. I don't know her
5 real name. It could be, but I'm not sure.

6 Q. OK. Did, in fact, the contest winners receive anything?

7 A. One of them did.

8 Q. All right. Who received something?

9 A. Instagram was the first one I saw, so Instagram winner.

10 Q. Did Makisa ever get anything from you?

11 A. Not initially. I didn't see her suggestion initially, but
12 I called her after the fact because she DMed me. I saw the DM,
13 I told her to call me, and then promised her one on the next
14 collection.

15 Q. Did you give Makisa one in the next collection?

16 A. No. We weren't able to launch that second collection.

17 Q. Have you given Makisa anything else?

18 A. Um, just asked her if she wanted, like, any of the other
19 art projects that are done, since then, that are not
20 MetaBirkins, but she's not as involved in crypto right now.

21 Q. Does the title of MetaBirkins, why did you pick out of the
22 various suggestions, why did you pick MetaBirkins?

23 A. Um, I thought it was a good name. People were attaching
24 Meta before, like, describing what was -- what the artwork was
25 at the time. You know, Facebook had named its, like,

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1 metaverse, you know, Meta and they changed their whole company
2 name.

3 So it was just a common thing to put it before them.
4 I thought it represented what we were creating very well. And
5 to me, Meta, like, I played a lot of video games and stuff, so
6 in video games, meta means, like, what's happening now, what
7 the best strategy is in a game, and I felt like it described
8 fur-free was what was happening now. So it just felt like a
9 good pairing.

10 Q. I may have asked you this before, but -- I think I did ask
11 you that question.

12 Did you hope to receive recognition for the work?

13 A. Um, yes.

14 Q. And why?

15 A. I mean, I think everybody wants to receive recognition for
16 stuff that they do. Artists come with the art that they
17 accomplish. I love receiving the credit for work.

18 Q. And did you make efforts to promote MetaBirkins?

19 A. Yes.

20 Q. What did you do?

21 A. Promoted it on my personal social media. And after we had
22 the name, I promoted it on MetaBirkins' social media, promoted
23 in Discord, which is, like, this big chat. I gifted it to --
24 not gifted it, but I white-listed different celebrities who had
25 influence who would, like, post it and share it also to, like,

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1 you know, hundreds of thousands or millions of people.

2 Um, as well as, like, whales in the NFT space, which
3 are, like, big art collectors of -- collectors of NFTs.

4 Q. As an artist, do you try to make an effort to build a
5 community of people who hold your work or know you?

6 A. Yeah. I feel, like, you know, there is collectors of Andy
7 Warhol. They probably all chat with each other and hang out.
8 I think it's important, especially in this new, kind of, day
9 and age, to be able to garner the attention of a community and
10 keep them updated on everything that you're working on.

11 Like, for example, with me, people know I work on --
12 at Terminal, and they know I have Terminal. And in return they
13 see everything that we're working on, and it gives them that
14 feel that we're kind of, like, all in it together.

15 Q. Now, did you ever send any text messages about promoting
16 MetaBirkins?

17 A. Um, I'm sure I did.

18 Q. And why would you do that?

19 A. Um, because that's how I communicate with help through text
20 message.

21 Q. And did you hope that MetaBirkins would increase in value?

22 A. Um, I could only hope so, but, I mean, I can't predict what
23 happened.

24 Q. Did you tell people that you hoped it would increase in
25 value?

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1 A. Yes.

2 Q. Now, if you're selling them for .1 ETH, \$450 a piece, and
3 you're not --

4 Why do you care if they increase in value?

5 A. I mean, I think the main reason is, one, I think it's great
6 for somebody who collects art to see that art appreciate, you
7 know, whether it's over time or instantly. Um, I think that's
8 a common trend -- sorry -- I think that's a common trend in the
9 art world. You know, Boscombe will paint something and sells
10 it at auction for 100. DaVinci will sell a painting for a
11 couple hundred million dollars, you know. That's how I
12 understand art works, so that was important to me.

13 Q. In those examples, both Mr. Boscombe and Mr. DaVinci are
14 deceased, so it's the holders of their current -- the current
15 holders of that pictures that would be able to resell?

16 A. Yeah, correct.

17 Q. Now, did you ever send any messages about pumping?

18 A. Yes.

19 Q. What did you mean by pumping?

20 A. It means -- the way I would describe it in this situation
21 is really, like, telling people to share the project. So
22 people see that association and people know that that person
23 is, like, well-respected in the art space. Oh, we like this
24 project, therefore, the price would go up.

25 Q. So you're --

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1 A. Theoretically, sorry.

2 Q. That's OK.

3 So you were asking -- am I right or wrong that you
4 were asking other people to pump the project?

5 A. Um, yes.

6 Q. And why would you ask other people to pump the projects?

7 A. I guess, like, my level of influence can only go so far.

8 Um, you know, at the time, I wasn't, like, massive on Instagram
9 or anything like that. Um, I had, like, you know, a good
10 ecosystem of people around me, but, you know, the more
11 influence that is, kind of, around the project, the more
12 attention it will get.

13 Q. And did you ever use the word chill?

14 A. Um, yes.

15 Q. And is that in text messages?

16 A. I think so, yes.

17 Q. What did you mean by that?

18 A. Chill is also, like, speak well of, you know. I think
19 these are all kind of, like, slang, like, that we use so. It's
20 kind of, like, bro-ey talk. But for the most part, it just
21 means to speak highly of or -- or yeah, I think that's the best
22 way I can describe it.

23 Q. When you say slang that we use, who is the "we" you're
24 referring to?

25 A. Honestly, just me and my friends and, you know, people who

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1 are, like, who collect NFTs or participate in Web3. It's at
2 the very infancy stage right now, so it's very um, like, a frat
3 or, like, a very bro-ish type of talk.

4 Q. And you were never a fraternity member, were you?

5 A. No.

6 Q. But very briefly for the jury, because I think it's the
7 first time the term came up, excuse me if I'm wrong, what is
8 Web3?

9 A. Web3 is kind of what we're in right now. So, like the
10 easiest way to describe it is Web1 is when you would log in
11 with your e-mail and password.

12 Web2 is kind of, like, the next evolution of that,
13 where you log in with, like, Google. You know, it says sign in
14 with Google or sign in with Amazon.

15 Web3 is signing in with a wallet, which is, like, your
16 source of identification. You have a seat phrase about, like,
17 self-custody.

18 Q. When you say sign in with a wallet, your referring to like
19 a crypto wallet?

20 A. Yeah, a crypto wallet.

21 Q. And, Mr. Rothschild, do you think you can get away with
22 things in art by saying "in the style of?"

23 A. Um, no, not necessarily.

24 Q. All right. Did you ever send a text message along those
25 lines?

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1 A. Um, yes.

2 Q. What were you thinking when you sent that?

3 A. Um, when I said get away with, I was, kind of, referring to
4 the situation. I was speaking about this situation that we're
5 in today, where I should be able to get away with creating this
6 artwork, um, because it's my artistic expression and, you know,
7 a company like Hermès shouldn't be able to sue me for it.

8 Q. Mr. Rothschild, is everything you did with MetaBirkins
9 public?

10 A. Um, yes. I mean, every communication is on Discord, which
11 is a public place. Anybody could join and all my transactions
12 are public on the blockchain.

13 Q. Did you have any ability to get away with anything in
14 secret with MetaBirkins?

15 A. Um, I don't think so, especially not at this stage, you
16 know, of discovery.

17 Q. Did you tell friends in text messages you might be
18 collaborating with Hermès?

19 A. Yes, at some point.

20 Q. And why?

21 A. Um, I work in fashion, so I know a lot of people in
22 fashion. And one of those people, um, was a high-ranking
23 member at a big, um, company called Yoox, said he had
24 connections at Hermès. And numerous people told me this, and
25 they said that they would try to get them on the line with me.

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1 Q. What is -- I'm sorry -- Yoox, Y-u-t-e?

2 A. Y-o-o-x.

3 Q. What is Yoox?

4 A. They are a company. They sell a lot of brands, plus they
5 also handle the e-commerce. I don't know what they do today.
6 This is just, like, my knowledge at the time. They handle
7 e-commerce for a lot of different companies, one of them was
8 Celerant, handled the web store and fulfillment.

9 Q. Why did you think they might be able to help you
10 collaborate with Hermès?

11 A. That member who reached out to me was a president of that
12 company at the time, um, and I just -- I just believed them.

13 Q. And were you, in fact, hoping to be able to collaborate
14 with Hermès?

15 A. For sure.

16 Q. And would you have liked to have collaborated with Hermès?

17 A. Definitely.

18 Q. Did there come a time you gave an interview, you gave an
19 interview or had an interview with Yahoo Finance?

20 A. Correct.

21 Q. Do you recall when that was?

22 A. It was shortly after the mint of MetaBirkins, so it had to
23 be, like, mid or early December. Um, anytime after the 4th, I
24 believe.

25 MR. HARRIS: Your Honor, the next exhibit you admitted

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1 yesterday with a limiting instruction. It's the Yahoo Finance
2 article. I'm going to just show the part of it that, if I may,
3 to the jury that you allowed in.

4 THE COURT: That's fine.

5 MR. HARRIS: OK. Ashley, just Mr. Rothschild's
6 statement.

7 All right. Thank you. Put it up on my screen first,
8 if you want to check to make sure we're getting it right.

9 Not the question, just the answer actually.

10 Can you do that? I think that's fine.

11 Oren, do you have any objection?

12 Your Honor, is that OK if we show it at is?

13 THE COURT: Yes.

14 MR. HARRIS: Thank you.

15 BY MR. HARRIS:

16 Q. Do you recall giving an interview?

17 I think I just asked you that. You gave an interview
18 to Yahoo Finance?

19 A. Yes.

20 Q. And you gave this answer.

21 Could you just read the first two sentences of it,
22 please, to the jury?

23 A. I say: I mean, for me, there's nothing more iconic than
24 the Hermès Birkin bag, and I wanted to see as an experiment to
25 see if I could create the same kind of illusion that it has in

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1 real life as a digital commodity.

2 Q. What was the illusion that you hoped to create or test with
3 MetaBirkins?

4 A. Um, I wanted to see what people valued, you know, um, in
5 art. I've seen a bunch of, like, funny just, kind of, art
6 projects and that -- and for me, if I, you know, charge a lot
7 less than the actual value of the product on the -- on the flip
8 side, on the resale side, will people attribute that same value
9 as, like, the real life product to this digital flat 2D image.

10 Q. Are you familiar with any other art projects that play with
11 the concept of what people will value things for?

12 A. Um, I mean, there is a ton. One of my buddies, he sells
13 uncirculated money, and people will pay -- it's, like, burned
14 and uncirculated. People pay \$50,000 for, like, literally
15 \$1,000 in actual value.

16 Q. So if it's \$1,000 bill or some such thing?

17 A. Yeah, like, ten hundreds and then sells them for 50,000
18 because, yeah, he's an artist.

19 Q. The rest of that sentence -- well, let's start at the top.

20 You say: For me, there is nothing more iconic than
21 the Hermès Birkin bag. We talked about that yesterday.

22 Why did you pick the Birkin bag for the fur-free
23 project?

24 A. Um, I had just come off the heels of Baby Birkin, which was
25 super successful. It sold for \$23,500, and then it resold for,

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1 like, \$47,000, I think, at the time. Um, so super successful,
2 and I didn't know it was going to follow up with anything,
3 honestly, until I saw that fur-free press release.

4 And then, like I said, the light bulb went off. When
5 it comes to just utilizing the Birkin bag, it was -- I live in
6 LA. Every housewife has one. Every person who comes into our
7 store has one. Our top clients are, like, Kylie Jenner comes
8 in and really popularized the Baby Birkin. I see it all the
9 time. I hear it all the time. It just was a recurring theme.

10 Q. Now, then you say you wanted to create the same kind of
11 illusion that it has in real life as a digital commodity, what
12 did you mean by the digital commodity part of this?

13 A. It's probably a bad choice of words. I mean, I'm not the
14 greatest with my vocabulary, and it's my first time doing a big
15 national TV interview. But to my understanding, you know,
16 people buy and sell art, you know, and a commodity is something
17 that you buy and sell. So I attributed the word commodity to
18 explain something that you buy or sell or trade.

19 Q. Can we skip down a little bit to one, two, three, four,
20 five -- five lines from the bottom. There is a comma, then it
21 says, Keeping that scarcity of 100 bags total and seeing what
22 the community does with that.

23 What are you talking about there?

24 A. Since there was only 100, and at the time, at the peak,
25 there was, like, about 50,000 people who wanted one. Well, in

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1 the Discord server, you can see how many people have joined
2 your server. There was 50,000 people going for 100 different
3 items, right. Um, so, you know, it's a standard supply-and-
4 demand thing. You know, there was only 100, but there was
5 50,000 people who wanted them. What happens there, what do the
6 people do with it.

7 Q. Take that down, please, Ashley.

8 Mr. Rothschild, who is Ken Loo?

9 A. It's my publicist.

10 Q. What is your current relationship with Mr. Loo?

11 A. Um, he's currently still by publicist.

12 Q. And did he work on the MetaBirkins project?

13 A. He was my publicist for it, but he didn't, like, make
14 anything or do any part of the creative.

15 Q. Did you ask Mr. Loo to make it known that you were the
16 creator of the MetaBirkins?

17 A. Um, yes.

18 Q. And what did you ask Mr. Loo to do?

19 A. Honestly, we were fielding a bunch of, like, press requests
20 and stuff. So Ken, as my publicist, is tasked with making sure
21 that I was credited for it, used the proper images, they don't
22 post, like, the wrong images -- there was a lot of fake
23 collections going on at the time -- and if they needed a quote
24 from me for the article.

25 Q. And did Mr. Loo give any instructions as to how he was to

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1 characterize the source of the MetaBirkins?

2 A. Yeah. It was always to make sure it was not, um, a
3 collaboration or done by Hermès. We have corrected the press
4 on numerous occasions where they accidentally said it was
5 Hermès and we said, Hey, like, that's incorrect.

6 You know, I have Google alerts which tells me every
7 time something gets published by me or has my name or
8 MetaBirkins. I was constantly monitoring it, making sure
9 nothing wrong was written in the press.

10 Q. Did you ever become aware, Mr. Rothschild, that any
11 purchasers of MetaBirkins were confused as to whether you were
12 the creator?

13 A. No.

14 Q. Did you ever need to correct any purchaser of a MetaBirkins
15 as to the source of the goods?

16 A. Um, no.

17 Q. You testified just a little bit ago that you kept one
18 MetaBirkin for yourself, right?

19 A. Correct.

20 Q. And when the MetaBirkins were originally minted, how many
21 of them did you get?

22 A. I minted one and then, um, one of my engineers had minted
23 one to test the contract. And then my other one, I had two
24 engineers, and they minted two of them prior to me. The first
25 three that get minted, I think, um, I forget the name of the

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1 expert earlier, but he said that there was three in my account.
2 Um, that was just done to -- I had two celebrities that needed
3 them. And they didn't have a wallet set up, so they
4 transferred to me to then transfer to them.

5 Q. Can you tell us who those celebrities are?

6 A. One was Future and the other -- I forget the other. One of
7 them was the rapper Future.

8 Q. And so you have how many MetaBirkins of that original 100
9 minting do you have right now?

10 A. One.

11 Q. And does your wife Ericka have any?

12 A. Yes. My fiancée.

13 Q. Fiancée.

14 How many does she have?

15 A. One.

16 Q. Do you know who Truman and Alex Sachs are?

17 A. Yes.

18 Q. Who are they?

19 A. They are brothers, my friends from -- I think we've been
20 friends for maybe eight years now.

21 Q. How do you know them?

22 A. The Internet.

23 Q. Internet?

24 A. Yeah.

25 Q. OK. Have you met them in person?

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1 A. Yes.

2 Q. And did there come a time around the time you were doing
3 MetaBirkins that the Sachs brothers were going to invest in
4 your projects?

5 A. Yeah. They were going to invest in me personally, not in
6 MetaBirkins specifically. But they wanted to invest in me to
7 keep creating.

8 Q. What do you mean by they were going to invest in you
9 personally?

10 A. Um, in me as an artist, in me as a digital creator. They
11 saw the potential in me, and they wanted to be a part of that.

12 Q. Were you going to set up some kind of business together?

13 A. Um, not necessarily a business. They were just giving me
14 the resources to continue to create. Um, you know, that's a
15 financial kind of -- you know, they gave me some cash to be
16 able to continue to create because, you know, these things cost
17 money.

18 Q. How would they have made money?

19 A. We would have split, like, revenue on projects that I
20 created.

21 Q. And did they, in fact, give you money to invest?

22 A. Yes.

23 Q. How much?

24 A. About \$100,000.

25 Q. So I asked a bad question. They didn't give you money to

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1 invest, they were investing in -- they gave you 100,000 to
2 invest in your projects?

3 A. Yeah. They invested 100,000 in me.

4 Q. And then did there come a time that the Sachs brothers
5 indicated they wanted to pull out of that project or not go
6 ahead?

7 A. Um, after I got the cease and desist, or I got the actual
8 complaint that we were getting sued, um, I knew that they were
9 a little bit hesitant to invest because, you know, the -- the
10 most exciting project I had at the time was MetaBirkins. So
11 they got a little bit of cold feet, so I sent them the money
12 back.

13 Q. Mr. Rothschild, was there a point in time when you had
14 plans or thoughts about minting additional MetaBirkins?

15 A. I'm sorry. Can you repeat the question?

16 Q. Sure. Bad question.

17 The original minting was 100 MetaBirkins, correct?
18 Did there come a point in time when you thought about releasing
19 additional MetaBirkins?

20 A. Um, yes.

21 MR. HARRIS: Ashley, is Defendant's 506 in evidence?
22 I think it is.

23 Could we please put up defendant's Exhibit 506.

24 Q. All right. What, again, is Defendant's Exhibit 506?

25 A. It's the MetaBirkins Instagram.

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1 Q. And these images we're looking at here, are these ones that
2 were actually released?

3 A. No. These were ones that we started creating for the
4 second collection.

5 Q. Is this Instagram page public so people could have seen
6 these?

7 A. Yes. It's still public.

8 Q. There is one on the bottom right-hand corner of the screen
9 with a banana taped to a white fuzzy MetaBirkin?

10 A. Yeah.

11 Q. Can you please explain for the jury what the thinking is
12 behind that?

13 A. There was an art piece at Art Basel that sold for a couple
14 million dollars. This was just a banana duct-taped to a white
15 wall, and I thought that was funny.

16 Q. Is this a reference to that?

17 A. Yes.

18 Q. Was this actually released?

19 A. No.

20 MR. HARRIS: Now, can we also look also on this
21 Instagram there is a picture, Ashley.

22 Q. Are you familiar with -- yes, there is a picture right
23 there?

24 A. Yes.

25 Q. What is that a picture of?

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1 A. It's a picture of -- I think she uses pencil --

2 C.J. Hendry, a picture of a Birkin on a concrete block.

3 Q. She's an artist and she's done that?

4 A. Yeah, she's a pretty big artist.

5 Q. Then up on the upper right-hand corner here, there's

6 MetaBirkins art we love.

7 Are you the person who posted that?

8 A. Yeah. I'm the only person that controls the MetaBirkins

9 Instagram.

10 Q. And it says by C.J. Hendry and Barbara Segal.

11 Who is Barbara Segal?

12 A. Barbara makes, like, marble Birkins. She carves them.

13 Q. I believe there is a picture of one of those on this

14 Instagram?

15 A. Yeah. That's Barbara.

16 Q. Is that Barbara Segal?

17 A. Yes.

18 Q. And these are stone Birkins that she sells as art?

19 A. Yes.

20 Q. Have you ever met either C.J. Hendry or Barb Segal?

21 A. No, but I've spoken to Barbara.

22 Q. Thank you.

23 Did there come a time when you planned or thought
24 about gifting a horse charm image to owners of MetaBirkin NFTs?

25 A. Yes.

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1 MR. HARRIS: Can we please -- I believe this is in
2 evidence, Exhibit 146. Could you just show it to me please
3 just for the judge and the witness.

4 Is that in evidence?

5 MR. WARSHAVSKY: I believe so. Yes, absolutely.

6 MR. HARRIS: Please go ahead.

7 BY MR. HARRIS:

8 Q. What is that image of?

9 A. It's, like, a fuzzy horse.

10 Q. And was that going to be a 2D or 3D image?

11 A. Also 2D.

12 Q. Could anyone have ridden their fuzzy horse in the
13 metaverse?

14 A. No.

15 Q. And what was the thought for the fuzzy horse?

16 A. It was partially, you know, because Hermès makes this, kind
17 of, fuzzy horse charm. And, two, it was kind of, like, at the
18 time, I have a couple horse tattoos. I really like horses, and
19 I just like wanted to give people a gift for supporting me in
20 NFTs. You know, everybody who owns your artwork by -- not by
21 name or anything, but by their wallet. It's a common thing to
22 be able to AirDrop something into their wallet that is, like, a
23 surprise.

24 Q. Since you raised the tattoos, you also have other art
25 tattoos?

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1 A. Yes. I have a Damien Hirst skull on my arm, and I have a
2 couple Francisco de Goya etchings, a bullfighter, and I have
3 this one right here, horse tattoo. I got a bunch.

4 Q. Mr. Rothschild, you said the Hermès horse was fuzzy.

5 Is it fuzzy?

6 A. Furry.

7 Q. What?

8 A. Furry.

9 Q. Yours is furry.

10 Is Hermès'?

11 A. I think it's just leather.

12 Q. So you were making a -- I just want to understand.

13 You were making a fuzzy image of an Hermès that is a
14 leather?

15 A. Yeah. Pretty much, like, the MetaBirkins.

16 Q. OK. Did you ever release the additional MetaBirkins, the
17 banana one, to be minted?

18 A. No.

19 Q. Did you ever gift the horse image?

20 A. No.

21 Q. Why not?

22 A. I had a cease and desist and eventually got sued, so I
23 didn't want to continue to push things out while there is
24 litigation happening.

25 Q. What did you do after receiving the cease and desist?

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1 A. I got a lawyer, um, who are in this room right now to
2 handle the response, because I'm not a lawyer.

3 Q. Did you ask that lawyer to reach out to Hermès?

4 A. Yes.

5 Q. Did there come a time where you were sued by Hermès?

6 A. Yes.

7 Q. And when was that?

8 A. I think it was mid January.

9 Q. Of?

10 A. 2021 or two -- 2022, sorry.

11 Q. And how did you learn you were sued?

12 A. In the press.

13 Q. And were you served a lawsuit?

14 A. Um, we accepted service via e-mail. They had my e-mail.
15 They had my lawyer's e-mail. They had my address. Um, but
16 they -- I guess they decided that that wasn't enough, so they
17 decided to serve me at work a few different times.

18 Q. When you say serve you at work a few different times, can
19 you describe that?

20 A. They had their process server come to my store, Terminal 27
21 in Los Angeles, hold up a picture of me, and ask our customers
22 and employees if they knew me.

23 Q. Had they just e-mailed it to you, would you have accepted
24 service?

25 A. Oh, yes. We told them we would accept this service by

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1 e-mail.

2 Q. How did you feel when you were served?

3 A. Um, I mean, it sucks to get served. I was, like, yeah. I
4 wasn't expecting it because we were just, kind of, in the midst
5 of talks, so neither me nor my legal team knew that we were
6 even going to get sued at that point.

7 Q. Were you angry?

8 A. Definitely.

9 Q. Did there come a time that you made a mock-up of an NFT
10 with the complaint?

11 A. Yeah.

12 MR. HARRIS: Ashley, could you please show the witness
13 and the court and counsel Defendant's Exhibit 559, please.

14 Can you show, just so the judge can see, can you show
15 the entire -- it's a text chain.

16 Q. Who is -- I'm sorry.

17 Who is Garrett McManus?

18 A. He's one of my good friends. He is one of the -- he was
19 one of the bigger players on the marketing side of CashApp and
20 now he works at MoonPay.

21 Q. What is MoonPay?

22 A. MoonPay is, like, the PayPal of crypto. It's a -- it's a
23 finance company in crypto. They are pretty big. Yeah.

24 MR. HARRIS: And can we just scroll up now just a
25 little bit. I want to show the witness, please.

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Estival - Direct

1 Q. Do you recognize what that is?

2 A. Yes.

3 Q. What is that?

4 A. It's a MetaBirkin that has the paperwork they sued me with
5 in front of it.

6 MR. HARRIS: Your Honor, I offer defendant's Exhibit
7 559.

8 MR. WARSHAVSKY: No objection.

9 THE COURT: Received.

10 (Defendant's Exhibit 559 received in evidence)

11 A. Is it really blurry on your screen?

12 Q. It's really blurry on my screen.

13 Can we maybe make it a little smaller or zoom in?

14 A. I think if you zoom out. It's 200 percent right now.

15 Q. All right. So it's small, but it's not blurry.

16 So what are we seeing here on the screen?

17 A. That's the complaint that -- or Hermès suing me, the actual
18 paperwork that I got.

19 Q. And did you ever release that MetaBirkin image?

20 A. No, I was just notifying people that I got sued.

21 Q. Did you send it to some people, some friends?

22 A. Yeah.

23 Q. All right. And then can we look at the next image.

24 What is that an image of?

25 A. It's a dead crocodile with a Birkin handle.

N21sHER2

Estival - Direct

1 Q. And why did you create that image?

2 A. I was pissed for being sued by Hermès, and I knew they had,
3 like, a little bit of a history of their handling of getting
4 crocodile skin to the point where Jane Birkin wanted to remove
5 her name from the Birkin bag. So I decided to do this as kind
6 of, like, an F you.

7 Q. And did you ever release the image of the crocodile?

8 A. Not publicly, only, like, in private text messages.

9 MR. HARRIS: Your Honor, I'm moving very briskly. I
10 probably have less than 20 minutes left.

11 Would you like me to finish or take a break?

12 THE COURT: No. I think we normally take our break at
13 11, so move right ahead at the rate you're going.

14 MR. HARRIS: Thank you, your Honor.

15 BY MR. HARRIS:

16 Q. Mr. Rothschild, have you worked on art projects since
17 MetaBirkins?

18 A. Yes.

19 Q. All right. Let me back up. I'm sorry.

20 Do you know a company called Electric Field?

21 A. Yes.

22 Q. What is Electric Field?

23 A. It's an artist management company.

24 Q. What is an artist management company?

25 A. A company -- just artists, musicians, song writers, um,

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Estival - Direct

1 they even have, like, a portfolio company where they invest.

2 Q. Who are some of clients?

3 A. Post Malone, Doja Cat, a bunch of song writers, like, Billy
4 Walsh, who writes, like, everybody's hits for, like, ETS, and
5 everybody.

6 Q. And do you have a relationship with Electric Field?

7 A. It's my manager, Austin Rosen.

8 Q. And what is CAA?

9 A. They are the biggest talent agency in the world.

10 Q. And do you have a relationship with CAA?

11 A. They are my agents.

12 Q. And did CAA have an NFT artist before they signed you?

13 A. I believe I was the first.

14 Q. And how about Electric Field?

15 A. I was the first.

16 Q. Now, could you tell me what Gasoline is?

17 A. Gasoline is, um, a studio created at the top of the year to
18 create these projects, since we were getting so much demand
19 from different companies or artists for us to help them enter
20 this new, like, NFT Web3 space.

21 Q. And when did you form Gasoline?

22 A. This year, January.

23 Q. January of 20 --

24 A. 2023.

25 Q. Literally last month?

N21sHER2

Estival - Direct

1 A. Officially, yes.

2 Q. All right. And how many people are employed at Gasoline?

3 A. Um, we're mostly freelancers. Um, I have four, four
4 engineers and two artists, and then my publicist.

5 Q. What is the difference between an engineer and an artist?

6 A. My engineers work on the code front end and back end, like,
7 website development. And then my artists, we create the art
8 for these different companies.

9 Q. What is your role at Gasoline?

10 A. CEO and creative director.

11 Q. Do you have investors for Gasoline?

12 A. Now we do, yes.

13 Q. And did there come a time when you did a project for an
14 entity called Scope?

15 A. Yes.

16 Q. What is Scope?

17 A. Scope is the biggest art show in terms of, like, volume at,
18 like, at Art Basel in Miami, which is, like, a big art fair for
19 furniture design, art, everything.

20 Q. And did you do that project individually or through
21 Gasoline?

22 A. Um, it was done by me, and then Gasoline produced it.

23 Q. And may I please put up for identification Defendant's
24 Exhibit 526.

25 Could you please describe for the court what

N21sHER2

Estival - Direct

1 Exhibit 526 is?

2 A. Um, it's, like, a compilation of the different floaties,
3 NFTs that we created as the ticket for Scope.

4 MR. HARRIS: Your Honor, I offer Defendant's Exhibit
5 526?

6 MR. WARSHAVSKY: No objection.

7 THE COURT: Received.

8 (Defendant's Exhibit 526 received in evidence)

9 Q. Please explain for the jury what you're doing in this
10 project.

11 A. Um, Scope is on the beach in Miami, so I made a bunch of
12 floaties. It was kind of a take on, like, a little bit of
13 global warming, where it's just, like, you know, you're going
14 to need a floatie to get to the next art show. So I'm giving
15 you those floaties because of rising sea levels.

16 Q. And what was this used as?

17 A. This was a ticket. So you would, um, show this at the door
18 and you would be able to get in. And this was a VIP ticket.

19 Q. Was this an NFT?

20 A. Yes.

21 Q. So just to explain technically, if I was somebody who comes
22 to the show, I would get this ticket as an NFT.

23 It would be on my phone?

24 A. Your phone or your computer, yeah.

25 Q. And then I would show that and that's my entry?

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Estival - Direct

1 A. Correct.

2 Q. All right. And then have you also done work for Formula 1?

3 A. A driver in Formula 1, but not Formula 1 the entity.

4 Q. And was that yourself or through Gasoline?

5 A. Both. So I -- CAA is my, like, my representation. They
6 get me the gigs as a studio, as a collective. We create the
7 asset.

8 Q. What did you do for Formula 1?

9 A. Designed a driver's helmet for the Abu Dhabi race last
10 year, as well as, like, their daily-use helmet.

11 MR. HARRIS: Ashley, could you please put up for
12 identification Defendant's Exhibit 607.

13 Q. Could you briefly designed for the court what that is?

14 A. Yes. There is another picture, but, like, this is -- the
15 race was in Abu Dhabi, so we did a take on the Empty Quarter
16 desert in Abu Dhabi, did kind of, like, a dust storm, put the
17 driver's number on there, their sponsors and, yeah.

18 MR. HARRIS: Your Honor, I offer Defendant's Exhibit
19 607.

20 MR. WARSHAVSKY: No objection.

21 THE COURT: Received.

22 (Defendant's Exhibit 607 received in evidence)

23 Q. You said there was another picture.

24 MR. HARRIS: Ashley, could you put up Defendant's
25 Exhibit 608.

N21sHER2

Estival - Direct

1 Just for -- sorry. You have to publish this first.

2 I'm sorry.

3 BY MR. HARRIS:

4 Q. Mr. Rothschild, just in the interest of time, is this a
5 good enough representation of the helmet?

6 A. It's a pretty good representation.

7 MR. HARRIS: OK. Thank you.

8 (Continued on next page)

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Estival - Direct

1 Q. Did there come a time when you did a project called, "I
2 Like You, You're Weird"?

3 A. Yeah.

4 Q. And what is that project?

5 A. It's 10,000 kind of cartoon little, like, cartoons we
6 called Weirdos.

7 MR. HARRIS: Ashley, could you put up for
8 identification Defendant's Exhibit 525.

9 BY MR. HARRIS:

10 Q. Could you briefly describe for the Court and counsel what
11 Defendant's Exhibit 525 is.

12 A. It's the OpenSea page of the "I Like You, You're Weird"
13 collection.

14 MR. HARRIS: Your Honor, I offer Defendant's Exhibit
15 525.

16 MR. WARSHAVSKY: No objection, your Honor.

17 THE COURT: Received.

18 (Defendant's Exhibit 525 received in evidence)

19 MR. HARRIS: Your Honor, may I have 30 seconds --
20 less, 10 seconds -- just to ask a question?

21 Thank you, your Honor.

22 BY MR. HARRIS:

23 Q. Could you please describe for the jury what these images
24 represent and maybe pick one out.

25 A. Yeah. It was a character that me and my partner at the

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Estival - Direct

1 time had created. It's kind of like a way for people to
2 represent themselves like for their profile picture or anything
3 like that. We kind of created a community around it.

4 Q. When you said your partner, did you have a partner for this
5 project?

6 A. Yes.

7 Q. Who is that?

8 A. Amber Park.

9 Q. Who is Amber Park?

10 A. She is a Korean-American artist both me and my fiancée have
11 known for about a decade and we decided to jump in to do a
12 project together.

13 Q. Were these NFTs?

14 A. Yes.

15 Q. Can we just -- I am just picking a Weirdo on the right.
16 Weirdo 4100.

17 A. Yeah.

18 Q. Okay. How was this Weirdo created?

19 A. It was illustrated, and then we illustrate all the
20 different kind of traits and stuff and then we put them into a
21 randomizer and it will change the body. It will give them a
22 different head, a different mouth, a different set of eyes, a
23 hat, and, like an ear.

24 Q. So you create the base parts?

25 A. Yeah.

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Estival - Direct

1 Q. Like you create the eyes?

2 A. It's like Mr. Potato Head.

3 Q. Okay. All right. And then they are put together. Got it.

4 This Weirdo 4100, this is OpenSea. OpenSea as we discussed
5 before somewhat in this trial, that's a site where you can buy
6 and sell --

7 A. NFTs.

8 Q. -- NFTs.

9 Did Weirdo 4100, was he sold?

10 A. Yeah. We sold 10,000 of these in less than 24 hours.

11 Q. You sold 10,000 meaning yourself and Ms. Park --

12 A. Correct.

13 Q. -- sold 10,000 of them?

14 A. Yes.

15 Q. Was that the entire release?

16 A. Yes.

17 Q. What we are looking at here, would this be somebody
18 reselling it or thinking of reselling it?

19 A. Yes. They are reselling it.

20 Q. So I would buy this Weirdo, but it wouldn't be from you?

21 A. Yeah. It would be from the person who owned it after
22 purchasing it.

23 Q. And do you get a piece of the --

24 A. We did initially, but we turned off the royalties on the
25 project.

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Estival - Direct

1 Q. So you do not get royalties on it?

2 A. Not today.

3 Q. You sold the 10,000. How much did you sell them for?

4 A. I think it was .08 Ethereum at the time. I am not sure
5 what the equivalent was at the time.

6 Q. Okay. And you could have sold -- if you sold them out, you
7 said in 48 hours, is there a reason you didn't make more?

8 A. We did make more. That collection called "I Hate You,
9 You're Scary." So you would be able to burn your artwork to
10 get the new one.

11 Q. Okay. Let's talk about that.

12 MR. HARRIS: Would you please put up for
13 identification, please, Ashley, DX 527.

14 BY MR. HARRIS:

15 Q. And could you please briefly describe for the Court and
16 counsel what it is we are looking at?

17 A. This is the OpenSea page, "I Hate You, You're Scary."

18 Q. Very briefly, what is "I Hate You, You're Scary"?

19 A. They are like the anti-Weirdos. We are telling a story
20 with this whole thing, you know, like, where these are kind of
21 like the antagonists of the Weirdos, so they're kind of a
22 little bit darker and scarier looking.

23 MR. HARRIS: Your Honor, I offer DX 527.

24 MR. WARSHAVSKY: No objection.

25 THE COURT: Received.

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Estival - Direct

1 (Defendant's Exhibit 527 received in evidence)

2 MR. HARRIS: And can we just go up a little -- thank
3 you.

4 BY MR. HARRIS:

5 Q. Are these created the same way as the "I Like You, You're
6 Weird" characters?

7 A. Yes. But we went the extra mile on these and we animated
8 them. I think if you hover over one, it should move.

9 All right. If you press the play button maybe.

10 Yeah, so they move.

11 Q. Did you release these?

12 A. Yes. So the -- we didn't sell them. The way you would get
13 one is by burning a Weirdo and you would get it for free.

14 Q. So if you acquired a Weirdo, you would get the Scary?

15 A. If you burned it, which means like getting rid of the
16 artwork forever.

17 Q. You have to trade it?

18 A. Trading.

19 Q. You're trading the Weirdo for the Scary?

20 A. Basically.

21 Q. Do you know who artist called Tom Sachs is?

22 A. Yes.

23 MR. HARRIS: I'm sorry. I don't --

24 Your Honor, I am going to finish by 11. This is the
25 last thing I am doing.

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Estival - Direct

1 BY MR. HARRIS:

2 Q. Who is Tom Sachs?

3 A. He is a conceptual artist, has been doing it for a while,
4 has collaborated with Nike recently, rebranded a McDonald's and
5 posted that yesterday.

6 Q. Do you know about a project he has called Rocket something?

7 A. Yes. Tom Sachs Rocket Factory.

8 Q. What is Rocket Factory?

9 MR. WARSHAVSKY: Objection, your Honor. Foundation.

10 THE COURT: How do you know about the project?

11 THE WITNESS: I know Tom personally now and I have
12 known him for years. He is a prominent artist.

13 MR. WARSHAVSKY: Withdrawn.

14 THE COURT: All right.

15 Go ahead.

16 BY MR. HARRIS:

17 Q. What is Mr. Sachs' Rocket Factory project?

18 A. It is a collection -- it is an NFT project. It is a
19 collection of different rocket components, so like with the
20 tail, the body and, like, the head of the rocket. And you are
21 able to sell them, and each part of the capsule or the rocket
22 capsule is branded with different logos.

23 Q. And do you know if those are also done as -- are those
24 physical or NFTs or how are those done?

25 A. They are NFTs that can also be turned physical. If you

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Estival - Direct

1 collect the rocket and you submit it to the launchpad, they
2 physically create that rocket and launch it here in New York
3 City.

4 MR. HARRIS: Your Honor, may -- Ashley, could you
5 please put up for the witness and Court and counsel Defendant's
6 Exhibit 517.

7 BY MR. HARRIS:

8 Q. Please briefly describe for the Court what that is.

9 A. This is an example of one of the rockets. It is a perfect
10 rocket, which means the tail, the body, and the head are all
11 matching logos. And it's branded with Hermès branding. On the
12 right is the physical and in the middle is the video of the
13 launch.

14 MR. HARRIS: Your Honor, I offer Defendant's Exhibit
15 517.

16 MR. WARSHAVSKY: Object on relevance, your Honor.

17 THE COURT: Come to the sidebar.

18 (Continued on next page)

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Estival - Direct

1 (At sidebar)

2 THE COURT: What is the relevance?

3 MR. HARRIS: The relevance, your Honor, is -- we
4 briefly discussed this yesterday. The relevance, your Honor,
5 is that this is a commercial project using the Hermès rocket
6 done by an artist who Mr. Rothschild knows and uses the Hermès
7 name and branding, and Hermès has not challenged it and they
8 know about it and they have not done anything to stop it.

9 THE COURT: Wait a minute.

10 Is this an actual project, or it is a planned project?

11 MR. HARRIS: It is an actual project.

12 THE COURT: When was it introduced?

13 MR. HARRIS: I don't know the answer, your Honor, but
14 I can find out.

15 THE COURT: Was it before or after Mr. Rothschild's
16 project?

17 MR. HARRIS: I believe -- I don't want to be
18 inaccurate -- I believe it was before, but I can check that.

19 THE COURT: So if it was after, I don't see the
20 relevance at all.

21 MR. HARRIS: Okay.

22 THE COURT: If it was before, the relevance, if any,
23 would only be what? Just showing that he thought other artists
24 were doing what he proposed to do? So what?

25 MR. HARRIS: So, your Honor, I mean, he uses the

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1 Hermès logo right there. It is similar, in effect, to the
2 Stone Birkin which is uses the name and calls it Stone Birkin.
3 Hermès is effectively picking and choosing what art projects
4 they think they can stop, and I believe that is a violation of
5 the First Amendment.

6 THE COURT: What is wrong with that?

7 MR. HARRIS: I think it is a violation of the First
8 Amendment.

9 THE COURT: Why is that relevant? If I am a company
10 and there are five people infringing my trademark and I choose
11 to go after three of them and not the other two? What does
12 that prove.

13 MR. MILLSAPS: Your Honor, may I?

14 MR. WARSHAVSKY: I am going to object. We keep
15 getting two sets of arguments. I'll let it happen this, time
16 but if this could be the last time.

17 THE COURT: I agree with that. We should only have
18 one person arguing, but I will hear this.

19 MR. MILLSAPS: The relevance, your Honor, is that it
20 isn't just a commercial project. When it's art, it is
21 protected by the First Amendment. A company should not be able
22 to pick and choose which artist they want to shut down and
23 which artists they don't like.

24 THE COURT: I think that is totally irrelevant.

25 Sustained.

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Estival - Direct

1 MR. HARRIS: Your Honor, may I ask him if he was aware
2 of this project before?

3 THE COURT: You can ask him that, but that is as far
4 as it goes.

5 While we are at the sidebar, something totally
6 unrelated. Juror No. 5 mentioned to my courtroom deputy either
7 yesterday or possibly even Monday that she had a doctor's
8 appointment on Thursday.

9 My courtroom deputy said, "Well, can you move it?"

10 And she said, "Yes."

11 Then this morning she said to my courtroom deputy,
12 "Don't forget that I have my doctor's appointment tomorrow."

13 My courtroom deputy reminded her that she had agreed
14 to move it.

15 My courtroom deputy suggested, and I think it is a
16 good idea, that I call her up to the sidebar at the break and
17 just remind her, with you guys present, remind her that she
18 should be moving that, but I just want to give you that
19 background so you will know why I call her up to the sidebar.

20 MR. HARRIS: I don't want to overstep your Honor. May
21 I ask if it was an influence?

22 THE COURT: Pardon?

23 MR. HARRIS: May I also ask if Mr. Sachs is an
24 influence.

25 MR. WARSHAVSKY: If I could respond to this, I don't

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1 think this should be allowed at all, your Honor. This was our
2 motion *in limine*. It is hard to try a case within a case.

3 If they want to ask Hermès about why Hermès may or may
4 not have gone after something it knows, that's one thing; but
5 it is quite another to ask a witness who doesn't know anything
6 about Hermès what he knows about this project.

7 THE COURT: Here's where I come down: For now I am
8 going to exclude it, including the question you just wanted to
9 put, but with two reservations.

10 First, I think it is critical that you find out
11 whether it was before or after.

12 MR. HARRIS: That was the question I was going to ask
13 him.

14 THE COURT: Well, okay.

15 Because if it's after, that's the last question.

16 MR. HARRIS: I was going to stop. If it was before, I
17 was just going to ask one more question.

18 THE COURT: Then the second thing is, while I think
19 his intent is an issue in this case, it bears on some of the
20 *Rogers* factors. It's not be all or end all, so to that limited
21 extent I think if it's before, then you can ask him whether it
22 impacted him.

23 MR. HARRIS: Okay.

24 THE COURT: But then that is as far as it goes.

25 MR. HARRIS: That's it.

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Estival - Direct

1 MR. WARSHAVSKY: Can I be heard on that? I'm sorry.

2 The problem I have with that is all of these, if
3 Hermès, whether Hermès knows or not, all of these factors, as
4 we have seen in this case or all of these -- I'm sorry, all of
5 these issues, as we have seen in this case, are highly fact
6 dependent. So the fact that that rocket that we just saw that
7 already has the Hermès logo on it and Hermès may not have
8 acted --

9 THE COURT: I am not allowing them to argue and I have
10 excluded now several times the argument that this is relevant
11 to whether Hermès should have acted or not.

12 Now it's being offered with these new questions on a
13 different ground, which is you are contending that his intent
14 or the effect of what he did was purely commercial. That
15 partly goes to what his intent was. It is not totally decided
16 by his intent, but the intent is relevant.

17 Indeed, I would be very surprised if you didn't ask
18 him a lot of cross-examination questions bearing on his intent.
19 So that's where it comes in, but for that limited purpose.

20 MR. HARRIS: I am going to ask the two questions and
21 then my exam is over.

22 THE COURT: Okay.

23 MR. HARRIS: All right.

24 (Continued on next page)
25

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Estival - Direct

1 (In open court)

2 MR. HARRIS: Ashley, please take that down. Thank
3 you.

4 BY MR. HARRIS:

5 Q. Mr. Rothschild, do you know if the Tom Sachs Rocket Factory
6 was done before you did the MetaBirkins project?

7 A. It was before.

8 Q. Was Mr. Sachs' project an influence on you?

9 A. Tom Sachs in general is an influence on me, but the project
10 specifically was not.

11 MR. HARRIS: Thank you.

12 THE COURT: Okay.

13 MR. HARRIS: No further questions.

14 THE COURT: Very good.

15 So ladies and gentlemen, we will take our midmorning
16 break and resume in 15 minutes.

17 (Continued on next page)

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Estival - Direct

1 (Jury not present)

2 (At sidebar; Juror No. 5 present)

3 THE COURT: Thank you once again for your excellent
4 service. You had mentioned I understand to my courtroom deputy
5 that you had an appointment tomorrow morning, and I thought we
6 had arranged to move that.

7 JUROR: In the morning. I have it 10:30 tomorrow.

8 THE COURT: You will need to move that. You need to
9 move it.

10 JUROR: I am calling today.

11 THE COURT: So can you move it. We need you here
12 tomorrow right here in court. We can't have you at the
13 appointment.

14 JUROR: Yes, I will call them now.

15 THE DEPUTY CLERK: Now is good.

16 THE COURT: Excellent. Thank you.

17 THE DEPUTY CLERK: Move it for two weeks so you will
18 be sure and safe to get there.

19 JUROR: Okay.

20 THE DEPUTY CLERK: Thank you so much.

21 (Continued on next page)
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Estival - Direct

1 (In open court)

2 THE COURT: You may step down.

3 I wanted to put on the record, both my reasons for
4 previously granting the motion *in limine* to exclude the
5 testimony of Dr. Gopnik and also my ruling earlier this morning
6 to allow the testimony of Dr. Kominers.

7 Dr. Gopnik is offered as an expert on "business art,"
8 but both in his report and in his deposition he fails to
9 identify in any meaningful fashion what his methodology is for
10 he applied it in this case, which, of course, are the express
11 requirements, among others, of Rule 702 of the Federal Rules of
12 Evidence.

13 Now, for example, he testified in his deposition,
14 "There is no consensus among art historians about anything, so
15 there cannot be a consensus on fur-covered Birkin bags."

16 Okay. Now, that's not the end of the subject because
17 experts can disagree, but it certainly means that there is not
18 a general acceptance of any particular approach to what is or
19 is not business art.

20 Then he goes on to say when specifically asked for his
21 methodology, he stated, that, well, he "looks at the larger set
22 of contextual clues that tell you, oh, this might be worth
23 looking at as an artist's activity."

24 When asked to define what that sentence meant, he
25 refused, or declined I should say, and never offered a

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1 systematic definition for business art.

2 So basically this is just his personal opinion. That
3 doesn't do it anymore. There was a time before Rule 702 was
4 amended where arguably that may have been allowed, but 702 was
5 amended to require an expert to demonstrate as a precondition
6 of admissibility a reliable methodology.

7 I might also add, though I don't think it's necessary
8 to reach this, that under the *Kumho Tire* case and other
9 subsequent cases even nonscientific evidence from experts
10 should be viewed at least somewhat in light of the *Daubert*
11 factors.

12 His opinion, near as I can tell, wouldn't meet any of
13 the *Daubert* factors. It not only hasn't been tested, it is on
14 its face untestable, unfalsifiable. It has no known error
15 rate. It has not been peer reviewed. And it has not been
16 generally accepted. In fact, it is as he explains it
17 essentially a hunch or a purely subjective opinion.

18 So that's why I excluded Dr. Gopnik.

19 Now, Dr. Kominers is giving an economic analysis based
20 on his background as a professor of business at Harvard
21 Business School, where, among other things, he studies the
22 economics and market design of NFTs. His analysis and his
23 methodology are quite clear. He does a comparison between how
24 NFTs that are associated with other brands operate in the
25 marketplace, the other brands being brands that expressly

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Estival - Direct

1 entered into the NFT marketplace. And he compares that to what
2 happened in the MetaBirkin marketplace, and he concludes that
3 the effect was, in his view, solely or wholly comparable to
4 what happens to those other brands and, therefore, reflected
5 the consumers' and the sellers' and purchasers' belief that
6 this was an Hermès Birkin bag product.

7 Now, there are lots of questions I am sure he will be
8 asked on cross-examination about that, but the methodology is
9 clear. The relevance to numerous factors both under the
10 *Polaroid* factors and under the *Rogers* test is clear. So
11 there's no comparison between him and Dr. Gopnik.

12 So those, without further elaboration, are the bases
13 for my rulings. I will give you another ten minutes for the
14 break and then we will resume with cross-examination of
15 Mr. Rothschild.

16 Let me mention one other thing. At the end of the
17 lunch break today, I am going to want you to give me who are
18 the remaining witnesses and a reasonably good idea of how long
19 each witness is going to be -- I know you can't predict that
20 with certainty at this point -- so that we can schedule things
21 like the charging conference and things like that.

22 Okay. Real good.

23 (Recess)

24 MR. WARSHAVSKY: May I raise one issue with the Court
25 before the jury comes in, your Honor.

N21nher3

Estival - Direct

1 THE COURT: Yes.

2 Go ahead.

3 MR. WARSHAVSKY: Your Honor, could we do a sidebar,
4 your Honor, for one minute.

5 (At sidebar)

6 MR. WARSHAVSKY: Your Honor, one of the exhibits we
7 intend to use on cross-examination is an exhibit that was part
8 of the defendant's motion *in limine*, which was about knowing
9 the judge. We do not intend to use that part of the text and
10 have shown defense counsel which parts we intend to use. We
11 will block those parts of the screen, and I understand defense
12 counsel has no issues with us using --

13 MR. HARRIS: I understand that they are going to use a
14 part of Rothschild 1039293.

15 THE COURT: I am not going to be able to deal with
16 this at sidebar.

17 MR. HARRIS: I am not objecting, your Honor.

18 THE COURT: Someone is going to have to -- and
19 hopefully with a hard copy and not up on the screen -- show me
20 at that point. Just say paragraphs 3, 5 or 7, whatever and I
21 will rule on then.

22 MR. HARRIS: Okay.

23 MR. WARSHAVSKY: Yes, your Honor.

24 (In open court)

25 THE COURT: Okay. Let's bring in the jury.

N21nher3

Estival - Cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Okay. Cross-examination.

4 MR. WARSHAVSKY: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. WARSHAVSKY:

7 Q. Good morning, Mr. Rothschild.

8 A. Good morning.

9 Q. Mr. Rothschild, I want to ask you a little bit about some
10 of the ways you conduct business. Do you communicate with the
11 people you work with primarily through text messaging?

12 A. Yes.

13 Q. And do you primarily use text messages like WhatsApp and
14 Apple Chat for your communication?

15 A. Yes.

16 Q. With your business associates?

17 A. Yes, sometimes.

18 Q. Do you store those communications on your phone?

19 A. Like, save them? Yeah, I mean, they're just on my phone.

20 Q. I think you spoke a little bit earlier about Truman Sacks
21 and Alex Sacks?

22 A. Yes.

23 Q. You said that they were -- would you describe them as
24 potential investors?

25 A. They invested, but then I gave the money back, so they are

N21nher3

Estival - Cross

1 just my friends.

2 Q. Okay. Micah Spear, is that how you say his name?

3 A. Yes.

4 Q. Micah Spear, is he a business associate?

5 A. He is a friend.

6 Q. He's a friend.

7 And Mark Design, how did you describe your
8 relationship with Mark Design?

9 A. First he was, you know, someone that I hired to work with
10 me and has since become kind of a friend.

11 Q. And your communications with Mark Design were also by text?

12 A. Yes.

13 THE WITNESS: Should I just put these on the floor?

14 THE COURT: Just put them on the side there. When we
15 get to them you -- they'll let you know when we get to them.

16 THE WITNESS: Got it.

17 BY MR. MILLSAPS:

18 Q. I think you said that Eric Ramirez, you sometimes do
19 business with him?

20 A. He is a friend, too. We work together sometimes.

21 Q. When you have communications about business, you do it by
22 text?

23 A. Sometimes by text, sometimes by phone.

24 Q. But if it's in writing it's by text?

25 A. Yes.

N21nher3

Estival - Cross

1 Q. And are you familiar with an individual named Aaron
2 Maresky?

3 A. Yes.

4 Q. Who is Mr. Maresky?

5 A. Also a friend I have known for a few years.

6 Q. Do you do business with Mr. Maresky?

7 A. Not currently.

8 Q. Have you ever done business with Mr. Maresky?

9 A. Not that I can recall.

10 Q. Okay. Earlier, when your counsel asked you about how long
11 you've known Alex and Truman Sacks you said eight years,
12 correct?

13 A. Truman, yes.

14 Q. Well, actually you said for both of them that you knew them
15 for eight years, correct?

16 A. Well, I was referring to Truman. Alex is his brother.

17 Q. And Alex Sacks you actually met on November 30, 2021,
18 correct?

19 A. Could be around that time that's when I was introduced to
20 him via text.

21 MR. WARSHAVSKY: I would like to show the witness and
22 the other side Plaintiff's Exhibit 277.

23 BY MR. WARSHAVSKY:

24 Q. It should also be on the screen in front of you, if that's
25 easier, Mr. Rothschild.

N21nher3

Estival - Cross

1 A. That is easier.

2 Q. Have you seen this document before?

3 A. Yes.

4 Q. Can you tell us what it is?

5 A. My LinkedIn.

6 Q. Does it look accurate?

7 A. Not to what it is today, but, yes.

8 Q. But at the time of this exhibit?

9 A. I would assume so, yes.

10 MR. WARSHAVSKY: We would move this into evidence,
11 your Honor.

12 MR. HARRIS: No objection.

13 THE COURT: Received.

14 (Plaintiff's Exhibit 277 received in evidence)

15 BY MR. WARSHAVSKY:

16 Q. What is your title here?

17 A. What part?

18 Q. How do you describe yourself as your employment here?

19 A. Marketing strategist.

20 Q. You also, if we scroll down, you have marketing director
21 for Terminal 27.

22 A. Yes.

23 Q. Is that your current position?

24 A. No. It's chief marketing officer now.

25 Q. Okay. Thank you.

N21nher3

Estival - Cross

1 What's the difference between the chief marketing
2 officer and a marketing director?

3 A. It is just artificial titles within a company.

4 Q. But the duties are the same?

5 A. I have a little bit more that I do now.

6 Q. If we go down to skills, one of your skills is trend
7 forecasting. What is trend forecasting?

8 A. Just knowing what's in and what's cool.

9 Q. What do you mean by what's in and cool? Can you explain
10 that a little more.

11 A. Just knowing what trends are happening right now. What's
12 cool in fashion or technology, art, business.

13 MR. WARSHAVSKY: Okay. I would like to show the
14 witness and the other side Plaintiff's Exhibit 281.

15 BY MR. WARSHAVSKY:

16 Q. Have you seen this document before?

17 A. Yes.

18 Q. Can you tell us what is this is.

19 A. It is an old résumé.

20 MR. WARSHAVSKY: We move this into evidence.

21 MR. HARRIS: No objection.

22 THE COURT: Received.

23 (Pleading's Exhibit 281 received in evidence)

24 BY MR. WARSHAVSKY:

25 Q. This is a résumé you sent out to potential employers?

N21nher3

Estival - Cross

1 A. At the time, yes.

2 Q. Okay. And how did you describe yourself here?

3 A. Marketing strategist.

4 Q. Okay. If we look at your first experience there, the first
5 experience listed Barney's New York?

6 A. Yes.

7 Q. How did you describe yourself there?

8 A. Marketing strategist.

9 Q. What was your position at Barney's New York?

10 A. Sales.

11 Q. What do you mean by sales?

12 A. Salesperson.

13 Q. You were on the floor? The salesperson on the floor?

14 A. Yes.

15 Q. So were you a marketing strategist at Barney's New York?

16 A. No. That was a typo that I expressed at my deposition.

17 Q. That is a typo?

18 A. I was copying and pasting from the previous, the other job
19 titles that you can see below it.

20 MR. WARSHAVSKY: Okay. If we could zoom out of that,
21 please.

22 BY MR. WARSHAVSKY:

23 Q. You listed a few different skills and expertise here?

24 A. Uh-huh.

25 Q. Advertising, branding and identity, marketing, and public

N21nher3

Estival - Cross

1 relations. How are those different?

2 A. They're different things. Public relations is not
3 marketing, and fashion buying is not marketing. They are all
4 different skills.

5 Q. Okay. Well, how is marketing different from advertising?

6 A. To me, honestly, at the time I was 17, and I was just
7 trying to make my résumé look as good as possible to potential
8 hires.

9 Q. And you have here fashion buying. At this time were you a
10 buyer for any companies?

11 A. No.

12 Q. So you didn't have a skill or expertise in fashion buying
13 at this time?

14 A. I don't believe that you can -- you can claim things that
15 you think you are good at in your résumé that you haven't done
16 before. But at the time I had experience working with
17 different brands and streetwear companies, and I would see what
18 was good and what was not, so I felt like I had that
19 credential.

20 Q. Is that because you saw it was good and what you thought
21 was trendy? Is that what you said?

22 A. That's not what I said.

23 Q. I'm sorry. What did you say?

24 A. I feel like I had different skills which I proved at
25 different parts of my career. This was very early on in my

N21nher3

Estival - Cross

1 career, like post high school, and I thought that I would be
2 good at that. So I put it on my résumé to potentially get a
3 job.

4 Q. So you thought you would be good at it?

5 A. Correct.

6 Q. Did you ever work at an advertising firm?

7 A. No, but I created advertising assets.

8 MR. WARSHAVSKY: Move to strike the last part of the
9 answer, your Honor.

10 THE COURT: What do you mean when you say created
11 advertising assets?

12 THE WITNESS: May I answer in the microphone?

13 THE COURT: Yes.

14 THE WITNESS: You can see print ads for American
15 apparel. I designed those ads.

16 THE COURT: Were these ads that were commissioned or
17 just something you were coming up with?

18 THE WITNESS: No, freelance ads that I altered
19 digitally in Photoshop that were published.

20 THE COURT: These were existing freelance ads?

21 THE WITNESS: I'm sorry?

22 THE COURT: I don't know what --

23 THE WITNESS: So I --

24 THE COURT: What do you mean by freelance ads?

25 THE WITNESS: I got a contract to create or edit

N21nher3

Estival - Cross

1 photos in Photoshop by the company, and they got published.

2 THE COURT: What company was that?

3 THE WITNESS: American Apparel, which is in this
4 résumé.

5 THE COURT: Okay.

6 Go ahead, counsel.

7 BY MR. WARSHAVSKY:

8 Q. Did you ever work at a marketing firm?

9 A. No.

10 Q. Did you ever work at a public relations firm?

11 A. No.

12 Q. What was your marketing experience at that time? Was it
13 the same as your advertising experience?

14 A. I would say at the time I was working for a streetwear
15 company called R H U D E, which is my buddy Rhuigi, and we were
16 marketing the brand to sell more product.

17 Q. Now, we are going to switch gears a little bit to talk
18 about the MetaBirkins for a little bit.

19 I think you said you had hired Mark Design, is that
20 correct?

21 A. Correct.

22 Q. And I think we asked you, other than through text message,
23 did you have any other communications with -- any other written
24 communications with Mark Design?

25 A. Probably on the site that I hired him on.

N21nher3

Estival - Cross

1 Q. But that would be it?

2 A. To my knowledge.

3 Q. So I would like to show the witness and the Court
4 Plaintiff's Exhibit 20.

5 MR. HARRIS: Two O?

6 MR. WARSHAVSKY: I'm sorry, Plaintiff's Exhibit 240,
7 two four zero.

8 BY MR. WARSHAVSKY:

9 Q. Have you seen this document before?

10 A. I think so.

11 Q. This is a document you produced in this case, correct?

12 A. Yes.

13 Q. And this is a text message exchange between you -- well,
14 here it says Mark Design. Is Mark Design the same as Mark
15 Berden?

16 A. Correct.

17 Q. This is a text exchange between the two of you?

18 A. Yes.

19 MR. WARSHAVSKY: We would offer this into evidence,
20 your Honor.

21 MR. HARRIS: No objection.

22 THE COURT: Received.

23 (Plaintiff's Exhibit 240 received in evidence)

24 MR. WARSHAVSKY: So we can publish it to the jury.

25 BY MR. WARSHAVSKY:

N21nher3

Estival - Cross

1 Q. Here you start saying, "Let's do another series of
2 Birkins," correct?

3 A. Yes.

4 Q. Is this the first time you -- well, let me ask it
5 differently. Were you referring to NFTs?

6 A. Yes.

7 Q. Was this the first time you discussed these NFTs?

8 A. I am not sure.

9 Q. And here, because the name hadn't come up yet, you were
10 just referring to them as Birkins, correct?

11 A. Yes.

12 Q. When you say "another series," what do you mean by
13 "another"?

14 A. This is after Baby Birkin.

15 MR. WARSHAVSKY: If we could turn to page 6.

16 BY MR. WARSHAVSKY:

17 Q. Mark asks you, "NFTs?"

18 And you respond, "NFTs."

19 Do you know why that was the question and answer
20 there?

21 A. Sorry. Can you repeat the question.

22 Q. Sure. Do you know Mark used the word "NFTs"?

23 A. Because it's Baby Birkin and an NFT.

24 Q. Do you know why you use the word "NFTs"?

25 MR. WARSHAVSKY: Scroll down.

N21nher3

Estival - Cross

1 A. Because that's what Baby Birkin was. When I said another
2 series, we referred to creating another NFT.

3 Q. Throughout this discussion -- and you can look in your book
4 if you like -- did you ever use the word "art"?

5 A. No.

6 MR. WARSHAVSKY: If we could show the Court and the
7 other side Plaintiff's Exhibit 316.

8 Humberto, I'm not sure -- plaintiff's Exhibit 316,
9 Humberto.

10 Okay. Thank you.

11 BY MR. WARSHAVSKY:

12 Q. Mr. Rothschild, have you seen this before, this document
13 before?

14 A. It looks to be a text message chain.

15 Q. Who is the text exchange between?

16 A. Me and Kenneth Loo.

17 Q. Who is Kenneth Loo?

18 A. My publicist.

19 Q. And this is a document you produced in this case?

20 A. I believe so, yes.

21 Q. What was your primary way of communication with Kenneth
22 Loo?

23 A. Text message.

24 MR. WARSHAVSKY: I move it into evidence, your Honor.

25 MR. HARRIS: Your Honor, I have no objection.

N21nher3

Estival - Cross

1 THE COURT: Received.

2 (Plaintiff's Exhibit 316 received in evidence)

3 BY MR. WARSHAVSKY:

4 Q. Please turn to page 2. Can you read the last text you sent
5 to Kenneth Loo?

6 A. "I'm making 13 Birkin NFTs."

7 Q. And in this text chain, which you also have in the book, do
8 you ever refer to the project as "art"?

9 A. No, because I was creating NFTs that are attached to art.

10 Q. That wasn't my question, Mr. Rothschild.

11 MR. WARSHAVSKY: I will actually, your Honor, move to
12 strike.

13 THE COURT: Well, I will strike everything after the
14 word "no."

15 MR. WARSHAVSKY: Thank you, your Honor.

16 THE COURT: So if a question can be answered simply
17 yes or no, just answer yes or no. If it requires a further
18 explanation, of course, then you may answer, and I will
19 determine whether it's appropriate or not, but I think that
20 question could be answered yes or no.

21 Go ahead.

22 THE WITNESS: Got it.

23 BY MR. WARSHAVSKY:

24 Q. I'm sorry. Looking through the document, the entire
25 document --

N21nher3

Estival - Cross

1 A. What number was that again?

2 Q. This was 316.

3 My question is, do you say "art" anywhere in the
4 document?

5 A. No.

6 MR. WARSHAVSKY: Can you please show the Court and the
7 other side Exhibit 243, please.

8 BY MR. WARSHAVSKY:

9 Q. Have you seen this document before?

10 A. Yes.

11 Q. Can you tell us what this is?

12 A. Another text message chain.

13 Q. Between whom?

14 A. Myself and Mark.

15 Q. You produced this in litigation?

16 A. Yes.

17 MR. WARSHAVSKY: Move it into evidence, your Honor.

18 MR. HARRIS: Your Honor, it is going to be more than
19 three words. Can we have a quick sidebar?

20 THE COURT: All right.

21 (Continued on next page)

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Estival - Cross

1 (At sidebar)

2 MR. HARRIS: Your Honor, it is a very long chain. My
3 guess is I won't object to the part that Mr. Warshavsky is
4 seeking to introduce, but I really don't have the ability to --

5 THE COURT: So why don't I receive it without
6 prejudice to your raising objections as he goes through it to
7 specific items, and I will rule right then and there.

8 MR. HARRIS: Okay.

9 THE COURT: What is the nature of your objection?

10 MR. HARRIS: It would be hearsay, your Honor.

11 MR. WARSHAVSKY: Your Honor, can I respond to that as
12 long as we are at sidebar?

13 THE COURT: Yes.

14 MR. WARSHAVSKY: We heard from this witness that this
15 is an individual that he hired, that his communications were by
16 text, and they were stored on his cell phone, which would
17 suggest to me that is a business record between this witness
18 and his employee for these purposes. Therefore, it comes
19 within the hearsay exception.

20 I don't think we are going to be offering most of this
21 for the truth of the matter asserted, but to avoid this
22 issue --

23 THE COURT: I don't think you have established enough
24 to show this is a business record. The mere fact that the
25 person was an employee doesn't mean that this is a business

N21nher3

Estival - Cross

1 record, but maybe you can establish it.

2 Anyway, we will proceed accordingly.

3 MR. HARRIS: Your Honor, I expect there will be some
4 additional like this. Can I just say "same objection"?

5 THE COURT: Yes.

6 MR. HARRIS: Okay.

7 (Continued on next page)

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Estival - Cross

1 (In open court)

2 MR. WARSHAVSKY: I think I had just moved --

3 THE COURT: So the exhibit is received, subject to the
4 limitations stated at the sidebar.

5 (Plaintiff's Exhibit 243 received in evidence)

6 MR. WARSHAVSKY: If we could furnish it to the jury.

7 BY MR. WARSHAVSKY:

8 Q. Here, this message begins with -- well, can you describe
9 what the first text is in this chain.

10 A. The words? The words or --

11 Q. Well, it looks like an image to me.

12 A. Yes.

13 Q. Actually, because of the way these were produced the color,
14 which is actually on 21 --

15 MR. WARSHAVSKY: Humberto, could you go to page 21.

16 THE COURT: I'm sorry. Remind me.

17 What's the number of this exhibit?

18 MR. WARSHAVSKY: It is, I'm sorry, Exhibit 243.

19 THE COURT: Okay.

20 BY MR. WARSHAVSKY:

21 Q. Is this an image made by Mark Design -- by Mark Berden.
22 I'm sorry.

23 A. Yes.

24 Q. And he was sending this to you on October 19?

25 A. Yes.

N21nher3

Estival - Cross

1 Q. Is this the next communication you had after the last one
2 we saw, when you said, "Let's do another series of Birkins"?

3 A. I'm not positive.

4 Q. Do you think it could be?

5 A. It could be.

6 MR. WARSHAVSKY: If we could turn to page 2 of that
7 exhibit.

8 BY MR. WARSHAVSKY:

9 Q. You and Mark Design are chatting here. Can you explain
10 what you are discussing here.

11 A. We are discussing the fluffiness of the MetaBirkin.

12 Q. Okay. And here, as Mark Design is writing back to you,
13 this is him talking to you as I understand it in the scope of
14 his employment with you?

15 A. Am I looking at the right page?

16 Q. Well, the one that starts "working now."

17 A. Yes.

18 Q. Okay. So here what you are talking about with Mark Design
19 is the business he's doing for you?

20 A. Yes. He's saying that he is working.

21 Q. Okay. And then if we look below --

22 MR. WARSHAVSKY: If you could shrink that. Sorry.

23 BY MR. WARSHAVSKY:

24 Q. He's saying he has to set it up to interact with the model
25 and then apply the right materials. Is that the work he's

N21nher3

Estival - Cross

1 doing for you?

2 A. Yes.

3 Q. And that's your communication about that work?

4 A. Correct.

5 Q. Were there any other means of communication at this time
6 between you and Mark Design?

7 A. We would mainly talk on WhatsApp.

8 Q. And is this a discussion one of the initial discussions you
9 are having about how Mark Design was going to be generating
10 these images?

11 A. I believe so.

12 MR. WARSHAVSKY: If we turn to page 15 -- actually, if
13 we could start on 14. I'm sorry about that.

14 BY MR. WARSHAVSKY:

15 Q. Do you see your last text on the page. You say, "What
16 program is this"?

17 A. Yes.

18 Q. Okay. And when you were asking what program, were you
19 asking about the program that generated what became known as
20 the MetaBirkins?

21 A. Yes.

22 MR. WARSHAVSKY: If we go to the next page.

23 BY MR. WARSHAVSKY:

24 Q. Do you see where Mark Design says "Houdini"?

25 A. Correct.

N21nher3

Estival - Cross

1 Q. If we go to your text in the middle of the page, is that a
2 typo in your text?

3 A. The --

4 Q. The one at 16:48:20.

5 A. "I really gotta learn these."

6 Q. That's a typo that says, "I really gotta learn these"?

7 A. Yes.

8 Q. When you said "I really gotta learn these," what were you
9 referring to?

10 A. The program.

11 Q. Which program?

12 A. Houdini.

13 Q. So at the time the MetaBirkins NFTs were being generated,
14 you didn't know how to use Houdini?

15 A. Correct.

16 MR. WARSHAVSKY: Okay. If we could turn to
17 Plaintiff's Exhibit 272.

18 Show the Court, the witness, and defense counsel.

19 MR. HARRIS: I'm sorry. What was the number?

20 MR. WARSHAVSKY: 272.

21 MR. HARRIS: Thank you.

22 BY MR. WARSHAVSKY:

23 Q. Have you seen this document before?

24 A. Yes.

25 Q. You produced this in this litigation?

N21nher3

Estival - Cross

1 A. Yes.

2 Q. Can you tell us generally what this is.

3 A. Me discussing compensation with Mark.

4 Q. Okay. This is a text message between you and Mark Design?

5 A. Yes.

6 MR. WARSHAVSKY: We would offer Exhibit 272 into
7 evidence.

8 MR. HARRIS: Your Honor, same.

9 THE COURT: Yes. The same ruling.

10 Received subject to the limitation stated at sidebar.

11 (Plaintiff's Exhibit 272 received in evidence)

12 MR. WARSHAVSKY: If we could turn to page 3 here.

13 BY MR. WARSHAVSKY:

14 Q. And at the top Mark Design writes to you, "Without
15 recognition they are worth" --

16 MR. HARRIS: Objection to that, your Honor.

17 THE COURT: Okay. Hold on.

18 I'm sorry.

19 Page 3?

20 MR. WARSHAVSKY: Page 3.

21 THE COURT: Oh, I see.

22 That particular response is, I think, ambiguous on its
23 face, so the jury will disregard that response.

24 Go ahead.

25 MR. WARSHAVSKY: Your Honor, I don't think I asked my

N21nher3

Estival - Cross

1 question. I was going to start --

2 THE COURT: I am just saying --

3 MR. WARSHAVSKY: Okay.

4 THE COURT: -- it actually goes back to page 2, at the
5 bottom of the page, and then the portion that is being objected
6 to is at the very top of page 3, and that objection is
7 sustained.

8 MR. WARSHAVSKY: Your Honor, can I ask for a quick
9 sidebar? I'm sorry to do it so quickly.

10 THE COURT: All right.

11 (Continued on next page)

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Estival - Cross

1 (At sidebar)

2 MR. WARSHAVSKY: Your Honor --

3 THE COURT: Excuse me, before I hear from you, let me
4 just make clear what you offered was at the top of page 3 --
5 that's why I asked you what page -- and it is half of an entry,
6 a single sentence, but you only offered the last half.

7 And I am sustaining the objection to that because half
8 of a sentence is inherently ambiguous, not to say misleading.

9 So that was my ruling. Now if you want to put in the
10 entire sentence, we go back to page 2, Mark Design says, "I
11 can't get the similarities out fast as I expected without the
12 recognition they are worthless." That may not be one sentence
13 because there are all sorts of redactions in between, which
14 makes this one of the least promising exhibits that I have seen
15 in this case.

16 But, in any event, what is here is that whatever is at
17 the top of page 3 was preceded by something. Either it was
18 preceded by what I just read or it was preceded by something
19 that's been redacted.

20 But on its face the jury could not possibly make any
21 head or tails of it because it's a dangling part-sentence.
22 That was the basis for my ruling.

23 Now let me hear you.

24 MR. WARSHAVSKY: I understood the objection to be
25 based on hearsay. What I was going to say is I wasn't going to

N21nher3

Estival - Cross

1 ask particularly about that. I was going to ask about what
2 they were discussing, what he understood.

3 I will give more context. The redactions, actually it
4 was the defendant's redactions. It is phone numbers. That's
5 why they are all redacted. It is actually not text.

6 THE COURT: So is the sentence I just read on page 2
7 the start of the sentence?

8 MR. WARSHAVSKY: It definitely is. And I will start
9 with that.

10 THE COURT: All right. If you can clear up the
11 ambiguity --

12 MR. WARSHAVSKY: Yes.

13 THE COURT: -- we would then reach the hearsay issue.
14 I don't think any of this is likely to be hearsay because at an
15 absolute minimum it goes to the state of mind of the witness.

16 So, for example, here is the word "worthless." And if
17 the witness were to say, "Oh, yeah, I understood everything we
18 were doing was worthless" that goes to the state of mind.

19 He may say something totally different. It is not
20 being offered for its truth. It is being offered for state of
21 mind. So it will be received.

22 If at some point you think it's worth giving the jury
23 an instruction on that, I'm happy to do so, though I have a
24 feeling you might just prefer to move it along.

25 MR. HARRIS: Okay.

N21nher3

Estival - Cross

1 MR. WARSHAVSKY: Thank you, your Honor.

2 Thank you for indulging us.

3 (Continued on next page)

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Estival - Cross

1 (In open court)

2 BY MR. WARSHAVSKY:

3 Q. So, Mr. Rothschild, if I could ask you to look one page
4 back.

5 MR. WARSHAVSKY: Humberto, if you could show that,
6 please. Page 2.

7 BY MR. WARSHAVSKY:

8 Q. So maybe if you can read page 2 and let us know when you
9 are done and we'll switch to page 3, Mr. Rothschild.

10 THE COURT: Let me just see if I can move this along.

11 You see, Mr. Rothschild, where Mr. Design states to
12 you, "I can't get the similarities out fast as I expected
13 without the recognition they are worthless."

14 Do you see that from page 2 going on to page 3?

15 THE WITNESS: Correct.

16 THE COURT: Did you have an understanding of what he
17 meant?

18 THE WITNESS: I think he meant like, since we're
19 covering the whole bag in fur, you lose a lot of fidelity. And
20 I guess we were just trying to make sure that it, you know,
21 still represented what we were trying to create.

22 THE COURT: Okay.

23 BY MR. WARSHAVSKY:

24 Q. And so when you were speaking about rec -- when the
25 discussion was talking about recognition, that was the shape of

N21nher3

Estival - Cross

1 the Birkin bag?

2 A. Yes.

3 Q. And was the recognition of the Birkin bag what gave these
4 Birkin NFTs at least part of their value?

5 A. They were called MetaBirkins, so we were speaking to what
6 we were showing in the artwork.

7 Q. Okay. So the date of this --

8 MR. WARSHAVSKY: Can we go back to the beginning of
9 this exhibit.

10 BY MR. WARSHAVSKY:

11 Q. The date here is November 4?

12 A. Yes.

13 Q. If you could look through the exhibit, can you tell me
14 where in the exhibit you use the word "MetaBirkins"?

15 A. We didn't have the name yet, but I had the idea. This was
16 post press release from Kering Group.

17 Q. Okay. So, going back, I asked you if the recognition as a
18 Birkin bag was important, or at least somewhat important to the
19 value of this project.

20 A. There was no value being kind of showcased here. We were
21 talking about the -- without the recognition that we are
22 creating the meta-- well, the prementioned MetaBirkins,
23 obviously didn't have a name yet, it was part of showing what
24 they were.

25 Q. Okay. But talking about recognition, the recognition you

N21nher3

Estival - Cross

1 were speaking about --

2 A. Right.

3 Q. -- was the Birkin shape?

4 A. Yes.

5 Q. Thank you. Without that Birkin shape, the image would be
6 worthless?

7 A. No. It -- with the recognition of, like, the actual --
8 because there is a fur, right, and we did different lengths of
9 fur at this point. If you couldn't see it, then nobody would
10 know what we were talking about.

11 MR. WARSHAVSKY: If we could scroll back out.

12 BY MR. WARSHAVSKY:

13 Q. You wrote a question here, "How much time is each bag
14 taking"?

15 A. Yes.

16 Q. Why did you say "bag" instead of "art."

17 A. Because the subject matter of the art is a handbag.

18 Q. But you called it a bag, correct?

19 A. Yes. But that's what --

20 Q. These are just yes-or-no questions. You called it a bag,
21 correct?

22 A. Yes.

23 Q. In this text chain, though you are using the word "art" in
24 your answers to me, in this text chain is there anywhere you
25 say the word "art"?

N21nher3

Estival - Cross

1 A. No.

2 MR. WARSHAVSKY: If we could turn to page 9.

3 BY MR. WARSHAVSKY:

4 Q. You write to Mark Design, "It's already hyped up and
5 investors are hyped on it."

6 Do you see that?

7 A. Yes.

8 Q. Who are the investors you are talking about?

9 A. At this point I believe it was Basic.Space.

10 Q. So Basic.Space was going to invest in this project?

11 A. They were going to pay for the minting fees and costs
12 associated with development of, like, the website, but that
13 was, like, the extent of their investment.

14 Q. What does "hyped on it" mean?

15 A. Excited.

16 Q. So Basic.Space was excited?

17 A. Yes, since we launched the Baby Birkin on it.

18 Q. Did Basic.Space get involved in the MetaBirkins?

19 A. They were going to be, but we had some disagreements on
20 advertising it or showing it. They wanted a lot more credit,
21 so I decided to do it on my own.

22 Q. Okay. So the answer is no?

23 A. No, but it is a little bit more complicated than that.

24 Q. Okay. Well, is it complicated? I asked you if Basic.Space
25 was ultimately involved.

N21nher3

Estival - Cross

1 A. Yes.

2 Q. Basic.Space was ultimately involved?

3 A. No. I'm saying --

4 Q. Okay.

5 A. -- they weren't.

6 MR. WARSHAVSKY: Okay. Let's turn to pages 21 and 22.

7 BY MR. WARSHAVSKY:

8 Q. Mark Design was sending you something here?

9 A. Yes.

10 Q. Was this the schematic for a Birkin?

11 A. Yes.

12 Q. I am going to show you this in a minute on the color
13 copies.

14 MR. WARSHAVSKY: If we could turn to page 33.

15 BY MR. WARSHAVSKY:

16 Q. Do you recognize what this is?

17 A. Yes.

18 Q. What is this? I'm referring to the picture.

19 A. It looks like Elmo's face on a MetaBirkin.

20 MR. WARSHAVSKY: Okay. If we could go to pages 34 and

21 35.

22 BY MR. WARSHAVSKY:

23 Q. So you are responding to Mark Design that you liked the way
24 this looks, right?

25 A. Yes.

N21nher3

Estival - Cross

1 Q. You say, "That's actually cute"?

2 A. Cute.

3 MR. WARSHAVSKY: Okay. And if we go to the next page.

4 BY MR. WARSHAVSKY:

5 Q. Can you read your text at the top of the page.

6 A. "I don't want to get sued to hell."

7 Q. Okay. So you don't want to get sued to hell? So who is
8 going to sue you?

9 A. Sesame Street.

10 Q. And why would Sesame Street sue you?

11 A. Because of Elmo's face.

12 Q. So if you used Elmo's face you expected Sesame Street to
13 sue?

14 A. I was kind of making a joke here.

15 Q. That's a joke?

16 A. Yes.

17 MR. WARSHAVSKY: If we could turn to pages 54 to 57.

18 If we could show 54 and 55, and I guess 56. So 54 and
19 55. Maybe take 56 down for a second.

20 BY MR. WARSHAVSKY:

21 Q. 54 and 55 were schematics for the Birkin bag?

22 A. Yes.

23 MR. WARSHAVSKY: Now if we could show 56.

24 BY MR. WARSHAVSKY:

25 Q. That is an Hermès pattern and the Hermès logo?

N21nher3

Estival - Cross

1 A. I don't know if it is an Hermès pattern, but it is the
2 Hermès logo.

3 Q. Hermès uses that orange color for its bags and everything
4 else?

5 A. I think so, yes.

6 MR. WARSHAVSKY: Okay. If we turn to page -- well,
7 57. If we could just do 57 here. Okay.

8 BY MR. WARSHAVSKY:

9 Q. This was also generated -- this shows the product of those
10 last three slides, is that right?

11 A. Yes, but never produced.

12 Q. Okay. Would you agree with me that this depicts an Hermès
13 logo in an Hermès orange on a Birkin bag?

14 A. Yes.

15 Q. This was being used as a model?

16 A. As a sample.

17 Q. It was a sample?

18 A. It's a tech test.

19 Q. It was a tech test that Mark Design sent to you?

20 A. Yes.

21 MR. WARSHAVSKY: If we could turn to Exhibit 239,
22 please. I'm sorry, just for the witness, counsel and the
23 judge.

24 BY MR. WARSHAVSKY:

25 Q. This is another text exchange between you and Mark Design?

N21nher3

Estival - Cross

1 A. Yes.

2 Q. It was also produced in discovery?

3 A. Yes.

4 MR. WARSHAVSKY: Move to introduce.

5 MR. HARRIS: Same, your Honor.

6 THE COURT: Same ruling.

7 MR. WARSHAVSKY: If we could turn to page 7?

8 THE COURT: So it's received, but without prejudice to
9 specific objections that you might make as to specific items
10 being inquired on.

11 MR. HARRIS: Thank you, your Honor.

12 (Plaintiff's Exhibit 239 received in evidence)

13 MR. WARSHAVSKY: If page 7 could be furnished to the
14 jury.

15 THE COURT: Yes.

16 BY MR. WARSHAVSKY:

17 Q. Can you please read the top message you sent to Mark.

18 A. "Realistically do you think we can crank out 100 Birkins?"

19 Q. Is that because you wanted to move quickly?

20 A. I just wanted to make a new project.

21 Q. Well, earlier we saw you talk to him about investors being
22 hyped, right?

23 A. Yes.

24 Q. Okay. I think you testified yesterday that in 2020, 2021
25 the NFT market was exploding, is that right?

N21nher3

Estival - Cross

1 A. Yes.

2 Q. Did you want to take advantage of that?

3 A. I wanted to do a follow-up to Baby Birkin.

4 Q. Okay. Did you want to do it quickly?

5 A. Yes.

6 Q. And you wanted Mark Design to move quickly with these
7 designs if he could?

8 A. I was just asking him if it was possible.

9 Q. I understood that.

10 Were you asking him if it was possible so he could do
11 it quickly?

12 A. I don't see where it says "quickly," but I just --

13 Q. I was asking you that. I wasn't asking if it said quickly
14 here?

15 A. No.

16 Q. So you didn't care how quickly he did it?

17 A. I have respect for the artist and the designer, so I wasn't
18 rushing him to do it.

19 Q. Okay. We'll come back to that then.

20 A. Okay.

21 Q. So let's go to Exhibit 243. Can you tell us what this is.

22 A. It is a page or the picture?

23 Q. No, the document, Exhibit 243?

24 A. More text messages.

25 Q. Between you and Mark Design?

N21nher3

Estival - Cross

1 A. Yes.

2 Q. And this is what you produced in discovery?

3 A. Yes. I think we looked at this.

4 MR. WARSHAVSKY: I offer it into evidence.

5 MR. HARRIS: I think you already offered this subject
6 to --

7 MR. WARSHAVSKY: This is the same one?

8 I'm sorry. This was already admitted.

9 My apologies.

10 MR. WARSHAVSKY: If you could turn to page 3.

11 BY MR. WARSHAVSKY:

12 Q. If you need context we can turn to pages 2 and 3.

13 Do you see those?

14 A. Yes.

15 Q. Okay. So you say, "Once we set it up, it will be pretty
16 quick to change colors and make a few different ones." Right?

17 A. Yes.

18 Q. So you were asking there about the speed in which they
19 could be made, correct?

20 A. No. I was speaking to the ease. If you could do something
21 easily, you could most likely do something quickly, but, yes, I
22 was speaking to if it was easy enough to do.

23 Q. So the word "quick" means "ease" to you?

24 A. Yes, in this context.

25 Q. Do you other times use the word "quick" as "ease," or just

N21nher3

Estival - Cross

1 here just in this text?

2 A. I sometimes associate the two.

3 Q. Okay. So when we see "easy and quick" we should use them
4 interchangeably?

5 A. Sometimes. I think we all know the term like "quick and
6 easy."

7 Q. We know the term "quick and easy"?

8 A. Yes.

9 Q. So do "quick" and "easy" mean two different things in that?

10 A. What I am saying is in the context of this particular text
11 that you are showing me.

12 MR. WARSHAVSKY: Move to strike, your Honor.

13 THE COURT: Overruled.

14 BY MR. WARSHAVSKY:

15 Q. Here you're referring to the MetaBirkins images, correct?

16 A. I believe so.

17 Q. You wanted to make a few different ones easily?

18 A. Yes. Like the process of producing them.

19 MR. WARSHAVSKY: Okay. Can you turn to page 5. Show
20 the witness pages 4 and 5 just for context.

21 BY MR. WARSHAVSKY:

22 Q. And you write to Mark Design, "In a few different color
23 backgrounds for each."

24 Do you see that?

25 A. Yes.

N21nher3

Estival - Cross

1 Q. And his response to you is, "Yeah, changes should be fast."

2 A. Yes.

3 Q. Do you think he understood you to be talking about ease or
4 speed?

5 A. Both.

6 MR. WARSHAVSKY: All right. If we could unzoom that.

7 I'm sorry, if we could turn -- okay. If we could turn
8 to Exhibit 273. Show the witness, the Court and defense
9 counsel.

10 BY MR. WARSHAVSKY:

11 Q. This is a document you produced in this case, correct?

12 A. Yes.

13 Q. This is a text message between you and Mark Design,
14 correct?

15 A. Yes.

16 Q. And so this was after the first 100 MetaBirkins were
17 minted, correct?

18 A. Yes.

19 MR. WARSHAVSKY: We would offer this document into
20 evidence.

21 MR. HARRIS: Same, your Honor.

22 THE COURT: Same ruling. Received.

23 (Plaintiff's Exhibit 273 received in evidence)

24 MR. WARSHAVSKY: Okay. If we could turn to page 4.

25 BY MR. WARSHAVSKY:

N21nher3

Estival - Cross

1 Q. If you want, you can scroll through all of it. We can show
2 pages 2, 3 and 4 for reference.

3 MR. WARSHAVSKY: Can we put 3 and 4 on the screen,
4 Humberto, please.

5 BY MR. WARSHAVSKY:

6 Q. Here, at the bottom of 4, what did you understand Mark
7 Design to be saying to you?

8 A. What is the question? Sorry.

9 Q. At the bottom of page 4, what did you understand Mark
10 Design to be saying to you?

11 A. He said he can get 40 to 50 out per day, so two to three
12 days, and then switch to the specials and the legendary ones.

13 Q. What did you understand that to mean?

14 A. For the simple ones that he was showing in terms of simple
15 one-colored ones, it would take two or three days, and then if
16 we were working on special ones, which had a little more going
17 on in the artwork.

18 (Continued on next page)

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N21sHER4

Estival - Cross

1 BY MR. WARSHAVSKY:

2 Q. So when he said he could get 40 to 50 out per day for two
3 to three days, that meant it took -- it would only get one out
4 in two to three days, is that what you just said?

5 A. 40 to 50 per day, as it says.

6 Q. So he was talking about generating the MetaBirkins?

7 A. Yes.

8 Q. OK. And he was saying here, he could generate 40 to 50 per
9 day?

10 A. Yes.

11 MR. WARSHAVSKY: Shrink out of that. Turn to page
12 six, five and six so the witness can see it in context.

13 I think we just saw page four. Now we can look at
14 page five and six.

15 Here, you're discussing --

16 Q. Let me know when you've read it.

17 A. Yes.

18 Q. So here, you and Mark Design are talking about the profits
19 you expect to make from the second collection of MetaBirkins
20 NFTs, is that correct?

21 A. Yes.

22 Q. OK. And then you're also talking about at the bottom here,
23 where it starts, yeah, I'll start on those specials ASAP.

24 Do you see that discussion?

25 A. Yes.

N21sHER4

Estival - Cross

1 Q. Do you want to see the following page seven to for context?

2 MR. WARSHAVSKY: If you can unzoom that, please, and
3 go to the top of seven.

4 Q. Here you say, so Mark Design could hammer these out,
5 correct; you're still talking about the MetaBirkins, right?

6 A. Second collection, yes.

7 Q. And so the goal here was to generate 50 images a day,
8 correct?

9 A. Um, that wasn't a goal. That is what Mark said he could
10 do.

11 Q. OK. So you had the plans for the second NFT collection,
12 correct, this is what this is all about, the second MetaBirkins
13 collection?

14 A. Yes.

15 Q. This is what this is all about?

16 MR. WARSHAVSKY: Can we go to Plaintiff's 306.

17 Furnish to the court and the other side, not to the
18 jury. I don't believe it's been admitted.

19 Q. OK. So this is a text exchange between you, Truman Sachs
20 and Alex Sachs, correct?

21 A. Yes.

22 Q. It was produced by the Sachs, Truman Sachs in this case,
23 right, if you know?

24 A. I don't know, but yeah.

25 Q. But it is a text exchange between the three of you, only

N21sHER4

Estival - Cross

1 the three of you?

2 A. Yes.

3 MR. WARSHAVSKY: Move into evidence, your Honor.

4 MR. HARRIS: Your Honor, my objection goes a little
5 further with this exhibit.

6 THE COURT: I'll allow it.

7 MR. HARRIS: Is that on the same basis, your Honor?

8 THE COURT: Well, other than hearsay, you have another
9 objection?

10 MR. HARRIS: It's 100 pages, your Honor. I have
11 hearsay and relevance to parts of it.

12 MR. WARSHAVSKY: Your Honor, I might have a solution.

13 THE COURT: Overruled as to relevance.

14 On a quick look through this exhibit, the hearsay
15 objection is overruled because some of the statements are the
16 defendant's and others are relevant to his state of mind.

17 I am concerned, however, about the length, so I will
18 direct counsel for both sides that what they think the jury
19 should take into account, if anything, from this exhibit has to
20 be specific entries that they direct to the attention of the
21 witness and not anything else.

22 With that limitation, the exhibit is received.

23 MR. HARRIS: Thank you, your Honor.

24 MR. WARSHAVSKY: Thank you, your Honor.

25 (Plaintiff's Exhibit 306 received in evidence)

N21sHER4

Estival - Cross

1 BY MR. WARSHAVSKY:

2 Q. If you could turn to page seven of that exhibit.

3 At this time, you're still talking to Truman and Mosh
4 Sachs as potential investors, or had they already invested?

5 A. I'm talking to my friends who invest.

6 Q. OK. I think you said Truman and Alex Sachs gave you
7 \$100,000 or invested \$100,000?

8 A. What is the date of this?

9 Q. If we can go back to the top. I think the challenge with
10 some of these -- and you can look through it as we go through
11 it. As your counsel noted, these are ongoing text messages.
12 Some of them get quite long. I think this is late November
13 into early December, but you can look through it in the book if
14 you would like to up to. Page seven.

15 A. So it's before MetaBirkins launched, so I haven't got an
16 investment yet.

17 Q. When about did they -- did the Sachs brothers invest
18 \$100,000?

19 A. I believe it was after the launch of MetaBirkins.

20 Q. Do you remember about how long after?

21 A. I don't remember exactly.

22 Q. Why don't we put up six and seven just in case to give
23 context, if the witness wants it. I'm particularly talking
24 about look being at page seven. Well, let's look at page six,
25 too, honestly.

N21sHER4

Estival - Cross

1 Here you say, you start by saying that you crank out
2 900. Do you see that?

3 A. Yes.

4 Q. And there are you referring to the MetaBirkins?

5 A. The next collection.

6 Q. The second collection of MetaBirkins?

7 A. Yes.

8 Q. OK. When you say you learned how to render during
9 quarantine, what does it mean to render?

10 A. Um, create 3D art.

11 Q. And then if we can go to the bottom of page seven, what I
12 was initially asking you about, you say -- what did you mean
13 when you said, we can launch anything now, but def more
14 Birkins?

15 A. MetaBirkins was -- I'm a little lost with the context, but
16 I think we can launch anything now, as in new projects, but def
17 more Birkins meaning more MetaBirkins.

18 Q. OK. If we can turn to page 31.

19 So looks like this starts December 1, first 30 pages
20 were all November 30. You say the community voted for 500 to
21 1,000 more MetaBirkins NFTs. You said MetaBirkins.

22 Where was the vote?

23 A. Discord.

24 Q. And you say you can probably crank out 300 with your team
25 before Christmas?

N21sHER4

Estival - Cross

1 A. Yes.

2 Q. So at that point, there would be an expectation that you
3 can get 300 out in the next 23 days?

4 A. Yes.

5 Q. And then you say the full collection will be 1,000.

6 Did you have an idea when that would be finished?

7 A. Um, I probably explain it later down the line, but I'm not
8 sure.

9 Q. OK. And then you say Dutch auction, what's a Dutch
10 auction?

11 A. The price goes down over time.

12 Q. So here, are you saying it would start at two ETH and then
13 every hour it would go down point one?

14 A. Yes.

15 Q. So after one hour it would be 1.9 and so on?

16 A. Yes.

17 Q. Is the Dutch auction to drive up the price or to make as
18 much money as possible on each, is that the idea?

19 A. It's just an auction. So the Dutch auction allows it to
20 be -- the price to be labeled due to the demand.

21 Q. OK. So the original one started at point one ETH?

22 A. Yes.

23 Q. OK. And in this one, you thought would start at two ETH,
24 correct?

25 A. Yes.

N21sHER4

Estival - Cross

1 Q. And it might go down, though, right?

2 A. This was a plan. This was never executed.

3 Q. If we go to page 32, but that was --

4 Well, let's go back for a minute because maybe I just
5 want to make sure we understand.

6 Your plan was to release -- you didn't release a
7 second set of MetaBirkins, that's what you mean, right?

8 A. No.

9 Q. But the plan was if it was released, it would -- the
10 thought here was that you could start at two ETH?

11 A. This was a thought at the time.

12 Q. OK.

13 A. But we had plenty of ideas.

14 MR. WARSHAVSKY: OK. And if we can turn to page 32.

15 Now you're continuing to have this same discussion --
16 I'm sorry. I'm sorry. I thought I was ...

17 We can move to the next exhibit. I'm sorry. I was
18 looking at a different --

19 Can you go to the top of 32 maybe. I'm sorry.
20 Looking at the bottom of 31. The bottom of 31, top of 32.

21 BY MR. WARSHAVSKY:

22 Q. Do you see that text?

23 A. Half of it.

24 Q. Well, it should be on both pages.

25 A. Yeah.

N21sHER4

Estival - Cross

1 Q. OK. Well done. OK.

2 You start by saying there is going to be 500 meh ones.
3 What did you mean by that?

4 A. Simple ones.

5 Q. And what did you mean by simple ones; does that mean like
6 one color?

7 A. Like, one color.

8 Q. One color was meh, and then you said 300 all right ones.

9 What does all right ones mean?

10 A. Just, like, working up the scale of, like, cool factor.

11 Q. And then 90 cool ones, I guess is that further up that
12 scale?

13 A. Yeah. They are cooler.

14 Q. Then ten super specials?

15 A. Yeah.

16 Q. And is a super special something like the Mona Lisa one, is
17 that what you mean by that?

18 A. No. This is, like, some that were, like, covered in slime
19 and some were, like, had, like, mammoth tusks coming out of
20 them. There was, like, a lot of work done on them.

21 Q. So where would the Mona Lisa one be in this range?

22 A. It was different. I mean, MetaBirkins, the original
23 collection of MetaBirkins was all, kind of, they didn't have
24 any additional, um, elements to them, like 3D elements to them,
25 like, tusks or anything. They were all just simulated fur with

N21sHER4

Estival - Cross

1 a graphic.

2 And for this next collection, we really wanted to,
3 like, go above and beyond. So you saw the banana earlier today
4 duct-taped to the bag and, like, a bunch of different ones.

5 Q. Let me stop you there.

6 Where would the banana be on this range?

7 A. The cool ones.

8 Q. That would be a cool one.

9 And so would Mona Lisa be an all right one or meh one?

10 A. Can I explain a little bit more in depth?

11 It's not really yes or no.

12 Q. We can pick a different one. You showed a few.

13 A. Yeah. I mean, for the Mona Lisa one, the goal of that
14 first collection was -- you didn't know what you were going to
15 get. So do people value the Mona Lisa one versus all red one,
16 you know, like, people attribute more value to the one that had
17 the Mona Lisa on it. It's kind of the -- to the eye of the
18 beholder. People are only willing to pay -- or they give a
19 price to whatever. It's whatever somebody is willing to pay
20 for the one that they want.

21 Q. OK. I understood that. I guess what I'm trying to
22 understand is what would count as, on this scale of coolness,
23 would the Mona Lisa rate anywhere on this one?

24 A. It's hard to say because the ten supers are the ones that
25 have extra work. 90 cool ones, I would say the Mona Lisa, it

N21sHER4

Estival - Cross

1 would be a super in terms of, like, what people value it at.

2 But in terms of the work put into it to create it, it would be
3 on, like, the all right scale.

4 Q. It would be the all right one. OK. Thank you.

5 If we can turn to Plaintiff's Exhibit 235. This is
6 another text message between you and Mark, correct?

7 A. Um-hmm.

8 Q. This was also produced in discovery by you?

9 A. Yes.

10 MR. WARSHAVSKY: Subject to the same objection, we
11 would offer into evidence, your Honor.

12 MR. HARRIS: Same, your Honor.

13 THE COURT: Same ruling. Received.

14 (Plaintiff's Exhibit 235 received in evidence)

15 MR. WARSHAVSKY: We can furnish to the jury.

16 And if we could turn to page -- well, pages one and
17 two, if you can show it to the witness.

18 Q. Here you're talking about making more MetaBirkins, right?

19 A. Yes.

20 Q. And, once again, we're talking about the time scale and
21 what Mark can do, regardless of what the time scale is, you're
22 trying to understand how much Mark can make here?

23 A. To a certain extent, yes.

24 Q. Now, let me ask you a totally different question.

25 Have you heard of the term blue chip?

N21sHER4

Estival - Cross

1 A. Yes.

2 Q. Is that like a stock?

3 A. I referred to it as art as well. There is blue chip art as
4 well.

5 Q. What is a blue chip art?

6 A. A high-valued art.

7 Q. OK. Can you give me an example of a blue chip art?

8 A. Salvator Mundi.

9 Q. OK. So let's go to Plaintiff's Exhibit 232 then.

10 Once again, this is a text message between you and
11 Mark Design dated November 29, correct?

12 A. It's blank.

13 Q. It's blank?

14 Well, if you look in your book, I think the first page
15 ask, but...

16 A. Oh, wait. What page am I looking at?

17 Q. You can look through all of them, if you would like. We're
18 showing you what was produced to us in discovery.

19 A. Are you asking me about something specific in here?

20 Q. I was asking about the whole chain so I can admit it into
21 evidence.

22 A. Oh, two --

23 Q. 232.

24 MR. WARSHAVSKY: If you want to show the second page
25 to the witness, defense counsel and the Court.

N21sHER4

Estival - Cross

1 A. Yes.

2 Q. This was produced by you in discovery?

3 A. Yes.

4 MR. WARSHAVSKY: Again, subject to, I guess, the same
5 discussions, move into evidence, your Honor.

6 MR. HARRIS: Same, your Honor.

7 THE COURT: Same ruling. Received.

8 (Plaintiff's Exhibit 232 received in evidence)

9 BY MR. WARSHAVSKY:

10 Q. OK. So if we can furnish to the jury pages one and two.
11 If you can show pages one and two so the witness can see it in
12 context.

13 This is a text message from you to Mark Design,
14 correct?

15 A. Yes.

16 Q. What are you sending to Mark Design?

17 A. Screenshot of the Discord.

18 Q. And --

19 A. The MetaBirkins Discord.

20 Q. What was the reason for sending that?

21 A. I was -- I think I was showing him, um, what the Discord
22 was.

23 If I can look through it. Just give me one second.

24 Q. We can turn to page three?

25 A. Yeah. I was talking about --

N21sHER4

Estival - Cross

1 Q. How about if we show pages two and three, if that is what
2 you're looking at.

3 A. Yeah. You want me -- do you have a question?

4 Q. I was asking why you sent it to him.

5 A. I was showing him how many people had joined the Discord.

6 Q. OK. And you say this might be the next blue chip, correct?

7 A. Yes.

8 Q. Because you had 10,000 members?

9 A. Yes.

10 Q. And now, I think you said earlier to counsel that you had
11 50,000 members, is that correct?

12 A. Later on. I mean, this was just a moment in time. It
13 grows over time. People join.

14 Q. How many members are there today?

15 A. I'm not sure.

16 Q. So why does Discord members matter for blue chip, if it's
17 just about art?

18 A. The, like, art, if there is only one, the demand -- it's a
19 supply-and-demand thing. There is 10,000 people, but there is
20 only one, one bag. So it's just, like, you know, there is --
21 this is supply and demand.

22 MR. WARSHAVSKY: If we can turn to page six. Maybe
23 page five and six so the witness has context.

24 Q. Here you're talking, this is when you float the idea to
25 Mark Design to make 900 more MetaBirkins, is that correct?

N21sHER4

Estival - Cross

1 A. Yes. But in the previous text message as you showed me,
2 there was a change in what we were going to release.

3 Q. I'm not sure. My question was, is this the first time you
4 spoke to Mark Design about making 900 more?

5 A. Um, I don't believe so, but what I was saying was --

6 Q. So when do you think you first said it, Mr. Rothschild?

7 MR. HARRIS: Objection.

8 A. There is --

9 THE COURT: I'll allow it. Overruled. I think the
10 witness was going beyond the scope of the question. We'll let
11 it stand as is, since counsel interrupted appropriately in that
12 case.

13 Go ahead. Put another question.

14 BY MR. WARSHAVSKY:

15 Q. When do you think you first -- if this wasn't the first
16 discussion, when was the first discussion?

17 A. Um, I'm not positive in the timeline, but there was a text
18 you just showed me that we said that we would just do, like,
19 200 more. So it was a changing dynamic.

20 Q. Are 200 and 900 the same thing?

21 A. No.

22 Q. OK. So when I asked you is this the first time brought up
23 900, you said no.

24 What were you referring to?

25 A. I'm saying I wasn't sure. I have, like -- because we just

N21sHER4

Estival - Cross

1 showed another text, there is a lot of dates going on. Lots of
2 time.

3 Q. Well, these are all your texts, right?

4 A. Yes.

5 Q. And I'm showing you the documents that you produced to us,
6 correct?

7 A. Correct.

8 Q. And I'm just asking you yes-or-no questions, to understand
9 and move this quickly, correct?

10 A. I wasn't sure if this is the first time because --

11 THE COURT: Whoa, whoa, whoa, woah. Hold on.

12 Whether or not the question can be answered yes or no
13 or requires a further explanation is in the determination of
14 the court. Not counsel, not the witness. In this case, I
15 think the witness was right that a further explanation was
16 appropriate, so put a new question.

17 MR. WARSHAVSKY: OK.

18 BY MR. WARSHAVSKY:

19 Q. So why don't you look at the document and let's shrink this
20 and go back.

21 You can look at the entire text chain, Mr. Rothschild.

22 A. OK.

23 Q. If we can show the jury pages one and two.

24 A. Or two and three, right?

25 Q. I was going to start at one and two so there is a date.

N21sHER4

Estival - Cross

1 A. OK.

2 Q. This is November 29, correct?

3 A. Yes.

4 Q. So this is before the release of the first MetaBirkins,
5 correct?

6 A. Yes.

7 Q. OK. Let's go to pages three and four.

8 Here you're talking about next potentially next drops,
9 correct?

10 A. Yes.

11 Q. OK. And you start by talking about drops of 100, correct?

12 A. Yes.

13 Q. OK. Let's go to the next page. Pages four and five.

14 Does this refresh your recollection as to whether you
15 had prior discussions about the second drop?

16 A. Um, not necessarily. This is a wide timeline from the
17 first text you showed me.

18 Q. I'm sorry. From which one?

19 When you say the first text --

20 A. The one that was a couple exhibits prior to this.

21 Q. The one between you and the Sachs brothers where you
22 mention 900 more?

23 A. Um, or it was Mark. I'm not positive.

24 Q. So if we look at page six.

25 You say we'll make 900 more, correct?

N21sHER4

Estival - Cross

1 A. Yes.

2 Q. And then you say 400K, correct?

3 A. Yes.

4 Q. OK. And how did you calculate 900 to 400K?

5 A. Probably multiplied it times, like, point one ETH or
6 something.

7 Q. Because at that time ETH were about 4500, does that sound
8 about right?

9 A. Sounds about right.

10 Q. So assuming a mint price of point one ETH, is that the
11 idea?

12 A. I think so, yeah.

13 Q. OK. So here is an interesting point.

14 So let's go back to Plaintiff's 306, and if we can
15 turn to page seven. Page seven. Pages six and seven. I'm
16 sorry.

17 And this is the same day, right, when you're saying
18 you can crank out 900?

19 A. Yes.

20 Q. And this is also the same day you're talking about the
21 Dutch auction, correct?

22 A. Um, I assume so.

23 Q. OK. So if we go back down, back to Exhibit 232. If we can
24 look at 232, page six.

25 So here when you're -- well, if you cannot -- if you

N21sHER4

Estival - Cross

1 can shrink that back.

2 You say 400K, 100K for ya. That meant 100K you were
3 paying to Mark Design?

4 A. Yes.

5 Q. 25 percent?

6 A. About, yeah.

7 Q. You didn't tell Mark Design about your idea about the Dutch
8 auction?

9 A. No. Like I said, my mind is saying a bunch of different
10 things to different people. Um, it's just whatever is on my
11 mind at the time.

12 Q. OK. And if you did the Dutch auction at two ETH, then I
13 guess ETH, if it was at 4500, that means the potential for a
14 second drop would be about \$4 million, correct?

15 A. Approximately.

16 Q. OK. And you talked earlier about an experiment of keeping
17 scarcity.

18 How would making 900 more, when you're talking about
19 400K and how much other people make, how does 900 more enter
20 into your experiment of scarcity?

21 A. At the time there was 50,000, approximately, people in the
22 Discord, so 1,000 total would still be scarce compared to the
23 demand.

24 Q. Well, didn't you just show -- didn't we just look at a text
25 that said 10,000?

N21sHER4

Estival - Cross

1 A. 10,000 what?

2 Q. Can we go back to page three, pages two and three.

3 Didn't you say 10K members here?

4 A. Yes.

5 Q. OK. So it wasn't 50,000, it was 10,000?

6 A. We were growing by thousands of people per day.

7 Q. Well, OK. Do you have any document to show that?

8 A. I don't. But this context says a few hours later, 10K
9 members. So you can kind of assume that people were joining.

10 Q. I didn't ask what you -- I'm sorry. Go ahead.

11 I didn't ask what you assumed. I asked you a very
12 simple question.

13 Do you have any documents to show that it ever grew
14 over 10,000 members?

15 A. Um, that I produced?

16 Q. Do you have any documents here in court today that you
17 produced, anywhere else?

18 A. No, but people --

19 Q. That was my question. You don't.

20 OK. So it's 10,000 members. Now you're saying you're
21 going to produce 900 more?

22 A. Um, yes.

23 Q. OK. So what you're saying, did you speak to any -- did you
24 speak to all 10,000 members?

25 A. Um, I held different, um, poles to see the demand, we

N21sHER4

Estival - Cross

1 brought up in an earlier exhibit, and I asked the community how
2 many they felt I should continue to make.

3 Q. That wasn't my question, Mr. Rothschild.

4 A. I was just giving you context.

5 Q. That's not context.

6 I asked you if you spoke to the 10,000 members?

7 A. I make server-wide announcements. So yes, I speak to them
8 all at once.

9 Q. Did you speak to the 10,000 members individually?

10 A. No. That would be difficult.

11 Q. OK. Did you speak to 9,000 of the members individually?

12 A. No, but I took a poll for all of them, that all of them
13 could have access to and vote for.

14 MR. WARSHAVSKY: Your Honor, could we have a sidebar,
15 please?

16 THE COURT: No, because it's time for lunch.

17 So, ladies and gentlemen, enjoy your lunch and we'll
18 see you at two o'clock.

19 (Continued on next page)

N21sHER4

Estival - Cross

1 (Jury not present)

2 THE COURT: You can step down.

3 (Witness temporarily excused)

4 Please be seated.

5 I do think that the witness, who earlier was
6 faithfully adhering to my direction that if a question can be
7 answered simply yes or no, it should be without further
8 explanation, and then only if it can't fairly be answered yes
9 or no is further explanation required is not as assiduously
10 applying that direction as he did earlier.

11 Sometimes he offers explanations that are necessary,
12 but many times recently he has not. For example, the pending
13 question was: Did you speak personally to all 900, or whatever
14 it was? And the answer was no, but then he went on to say, but
15 I took a survey or whatever. I don't have the transcript right
16 in front of me, but the answer was just no, and that's all.

17 So maybe his counsel wants to talk to him a little bit
18 over the break to make sure that he understands the rules of
19 the game.

20 We'll see you at two o'clock.

21 (Luncheon recess)

N21sHER6

Estival - Cross

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: While we're waiting for the jury, give me the quick overview of the timeline.

MR. WARSHAVSKY: Your Honor, counsel spoke.

We expect Mr. Rothschild to go at least today and probably tomorrow morning as well.

After that, with Dr. Kominers, we expect between both sides probably 90 to 120 minutes. So that's direct and cross.

After Dr. Kominers, there will be two Hermès employees, Max Moulin and -- I'm sorry, the names -- two employees. I think between the two of them will be about two hours total, maybe less.

There is then two experts. I think we agreed, between the two of them, maybe two and a half hours total, maybe a little bit longer.

There was one witness that both parties had, Kenneth Loo. We have agreed to cut him.

THE COURT: All right. It sounds to me --

MR. WARSHAVSKY: Sounds like Friday afternoon.

THE COURT: Sounds to me like the evidence will end Friday afternoon, and we'll have to figure out maybe, we'll have the charging conference Friday night.

OK. Let's bring in the jury.

N21sHER6

Estival - Cross

1 (Jury present)

2 THE COURT: So, ladies and gentlemen, I've been just
3 going over the schedule with counsel, and I wanted to share
4 that with you, and then we'll get the witness back on the stand
5 in a second.

6 So we are very much on target. Now tomorrow, we will
7 only sit until one o'clock because of other matters that I have
8 to deal with. But on Friday we will go until 4:30. The reason
9 we will do that is we expect to be able to finish the evidence
10 in this case by late afternoon on Friday.

11 Assuming that occurs as planned, then Monday morning
12 we'll have closing arguments of counsel, my charge to the jury,
13 and the case will be yours to start deliberating Monday
14 afternoon.

15 So we are very much on schedule, but I wanted to share
16 that with you.

17 OK. Let's get the witness back on the stand.

18 MR. WARSHAVSKY: Thank you, your Honor.

19 BY MR. WARSHAVSKY:

20 Q. Mr. Rothschild, when we broke we were looking at
21 Plaintiff's Exhibit 232, where you were going back and forth
22 with Mark Design.

23 Do you recall that?

24 A. Yes.

25 Q. OK. Can we turn to page 11 of that exhibit, please.

N21sHER6

Estival - Cross

1 Here, your text message saying -- do you need to see
2 the tenth page here, just for context, or no?

3 MR. WARSHAVSKY: Put the tenth page up, Humberto, so
4 he can see both.

5 Q. Here on page 11 you say, We're sitting on a gold mine.

6 Are you talking about the next drop of the MetaBirkins
7 you were planning?

8 A. Um, just MetaBirkins entirely.

9 Q. MetaBirkins entirely. OK.

10 MR. WARSHAVSKY: OK. You can take the exhibit down.
11 Thank you.

12 Q. I just want to switch gears.

13 Earlier this morning you talked about the negotiations
14 that led up to the lawsuit. Do you remember that?

15 A. Yes.

16 Q. OK. Your counsel was speaking to Hermès' counsel at the
17 time, is that right?

18 A. Yes.

19 Q. OK. And are you aware that your counsel had provided
20 Hermès' counsel with a deadline to conclude negotiations on the
21 same day that you were sued?

22 MR. HARRIS: Objection, your Honor.

23 THE COURT: Hang on. Let me see.

24 Well, even though the door was opened, I think in the
25 end it's more a matter for confusion than for probative value.

N21sHER6

Estival - Cross

1 On 403, I sustain the objection.

2 MR. WARSHAVSKY: Understood, your Honor.

3 Q. Mr. Rothschild, I want to ask you a little about the
4 Parsons project that we spoke about.

5 A. Yes.

6 Q. So you just said you were engaging in artistic expression
7 because people wanted Parsons T-shirts and you made it for
8 them, is that right?

9 A. Well, it was my take on what I thought it should look like.

10 Q. OK. What did the Parsons T-shirts look like at that time?

11 A. The ones that I created?

12 Q. No, the ones that Parsons was selling.

13 A. I can't remember specifically.

14 Q. Well, tell us of the design. Did it have the Parsons name?

15 A. Um, not that I remember.

16 Q. What color was it?

17 A. Um, various colors. There was -- they had a certain line
18 of merchandise at their store.

19 Q. So you don't remember, sitting here today you don't
20 remember what it looked like?

21 A. It was a while back.

22 Q. OK. You said that Saint Martins liked your work and wanted
23 to partner with you, is that correct?

24 A. Somebody from their student store reached out.

25 Q. OK. Did you ever produce in this case any of that

N21sHER6

Estival - Cross

1 correspondence?

2 A. I do not have e-mails from 2015.

3 Q. OK. We just have your word for it?

4 A. Correct.

5 Q. OK. Chair one, we talked about the Do Not Sit. Do.

6 You remember we spoke a little about that and we spoke
7 about chair one, chair two?

8 A. Um-hmm.

9 Q. OK. Can we call chair one the one that went from one ETH
10 and the chair two went for something less.

11 Does that make sense?

12 A. Yeah.

13 Q. OK. Chair one, was that the one that you said was done
14 by -- that was based on Pierre Jeanneret, was that the name?

15 A. Yes.

16 Q. Now, by the way, if I understood counsel correctly,
17 somebody else generated that image for you, correct?

18 A. Yes.

19 Q. Was that Mark Design?

20 A. Yes.

21 Q. OK. He wasn't named anywhere on the project?

22 A. No.

23 Q. OK. And you didn't call that the Pierre Jeanneret chair,
24 right?

25 A. No, it's called Do --

N21sHER6

Estival - Cross

1 Q. I'm sorry. Go ahead.

2 A. No, it's called Do Not Sit.

3 Q. OK. But you didn't have anything calling it metakangaroo
4 chair or metaPierreJeanneret in any of your marketing?

5 A. No, but I put it in the description.

6 Q. So in the description it was called met -- I'm asking the
7 title of the work?

8 A. It was called Do Not Sit.

9 Q. You didn't have a website called kangaroo chair or Pierre
10 Jeanneret?

11 A. No.

12 Q. You didn't say Not Your Father's kangaroo chair or
13 something like that for advertising it?

14 A. No.

15 Q. Did you ask people -- you talked a little bit about pumping
16 and chilling.

17 Did you ask anybody to pump and chill for you for
18 that?

19 A. No.

20 Q. And you said it was sold for one ETH, correct?

21 A. Yes.

22 Q. Isn't it true that a friend bought that from you?

23 A. Yes.

24 Q. OK. And then we talked about chair two.

25 Chair two, that was the one where it was a Michel

N21sHER6

Estival - Cross

1 Ducaroy, am I he pronouncing that correctly?

2 A. I'm not sure, but sounds about right.

3 Q. Sound about right.

4 You know which one I mean?

5 A. Yes.

6 Q. OK. You didn't call that the metaMichelDucaroy chair?

7 A. No.

8 Q. And you didn't have a website that used Michel Ducaroy's
9 name?

10 A. No. I sold on Foundation.

11 Q. Did anybody pump or chill for that chair?

12 A. Um, people talked about it, but -- which is what that kind
13 of means. But I didn't describe it as that.

14 Q. OK. You minted that chair on about April 3, correct;
15 April 3, 2021, correct?

16 A. Sounds right.

17 Q. OK. And at that time you listed it for about 1 ETH,
18 correct?

19 A. Um-hmm.

20 Q. And no one bought it at that price, right?

21 A. No.

22 Q. And about on April 5, 2021, you reduced it .5 ETH, right?

23 A. Yes.

24 Q. And nobody bought it then right?

25 A. No.

N21sHER6

Estival - Cross

1 Q. On April 14, you actually reduced it to .33 ETH, correct?

2 A. Yes.

3 Q. And nobody bought it then, right?

4 A. No.

5 Q. OK. And then it actually took until November 30, 2021,
6 after you teased the MetaBirkins for somebody to buy that,
7 right?

8 A. I don't know the dates.

9 Q. Does that sound about right?

10 A. Could be.

11 Q. And who bought -- let me ask it better.

12 One of your friends bought that chair from you, too,
13 right?

14 A. Not one of my friends, but a friend of a friend.

15 Q. A friend of a friend. OK.

16 Now, your next project after the Do Not Sit was the
17 Baby Birkin, correct?

18 A. Um-hmm.

19 Q. And this time you did copy -- I think as you testified, you
20 copied the outline of the Hermès Birkin bag, correct?

21 A. Um-hmm.

22 Q. And I don't know if you said -- I apologize for asking
23 again.

24 Did Mark Design do the animation for that as well?

25 A. Yes.

N21sHER6

Estival - Cross

1 Q. But he's not credited anywhere?

2 A. No.

3 Q. Just you and Eric Ramirez?

4 A. Yes.

5 Q. And this sold for much more, correct, ten times that
6 amount?

7 A. Approximately.

8 Q. And, by the way, did you bid on the Baby Birkin yourself?

9 A. No.

10 Q. No. Do you remember me asking you about this at your
11 deposition?

12 A. I was the first bid.

13 Q. So you did bid on it?

14 A. Yes.

15 Q. So had you won the bid, you would have bought it from
16 yourself?

17 A. For 100, yes. It would be minted.

18 Q. OK. Was that an effort to prop up the price?

19 A. No, it was just to -- I wanted to own my artwork. So,
20 like, when you bid, it would have to be minted. So it wasn't
21 minted until somebody bid on it.

22 Q. OK. And at that time, you didn't -- you didn't have a
23 *BabyBirkin.com* website, did you?

24 A. No.

25 Q. You didn't ask anybody to pump and chill for that, did you?

N21sHER6

Estival - Cross

1 A. Um, not that I recall. But, I mean, like, people knew
2 about it, told people about it, and we did promote it to NFT
3 collectors at the time.

4 Q. OK. Well, in this case, again, I think we heard your
5 lawyer in opening statement say that you produced thousands of
6 text messages.

7 Were any of those text messages about pumping and
8 chilling the Baby Birkin?

9 A. I'm not sure.

10 Q. OK. And you only made one, correct?

11 A. Yeah.

12 Q. And we'll get into it a little bit later.

13 For the MetaBirkins, you had to build a MetaBirkins
14 campaign, correct?

15 A. It was a contest.

16 Q. You didn't do that for Baby Birkin, did you?

17 A. No.

18 Q. Just to contrast, just to finish this thought, for the
19 MetaBirkins you made 100, correct?

20 A. Yes.

21 Q. You made a *MetaBirkins.com* website, correct?

22 A. Yes.

23 Q. You made social media accounts, including Twitter,
24 Instagram, and Discord, correct?

25 A. Yes.

N21sHER6

Estival - Cross

1 Q. And that is something you didn't do for prior projects?

2 A. No, because they were just one.

3 Q. And in some of your promotion, you actually encouraged
4 others to make MetaBirkins with household items like the
5 MetaBirkins, like the build-your-own MetaBirkin, correct?

6 A. Yes.

7 Q. And as you discussed with counsel, we'll discuss in a
8 little bit, you actually asked influencers to pump and chill
9 for you for the MetaBirkins, correct?

10 A. Yes.

11 Q. And you sought whales to sweep the floor, am I saying that
12 correctly?

13 A. Um-hmm.

14 Q. And is that correct?

15 A. Yes.

16 MR. WARSHAVSKY: OK. Let's talk a little about the
17 MetaBirkins name and slogan.

18 Now, Humberto, can you please bring up Exhibit 238,
19 just to the witness, the court and defense counsel, please.

20 Q. OK. Have you seen this document before?

21 A. Yes.

22 Q. Can you tell us generally what it is?

23 A. It is the same post from Instagram announcing what was to
24 eventually be called MetaBirkins and then asking people to
25 suggest names.

N21sHER6

Estival - Cross

1 Q. OK. But it's a Twitter post on your account?

2 A. Yes.

3 MR. WARSHAVSKY: Move into evidence, your Honor.

4 MR. HARRIS: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 238 received in evidence)

7 Q. OK. So this is the contest, the other side of the contest
8 that you ran on Twitter, right?

9 A. Yes.

10 Q. And as you said, you were requesting names and --

11 MR. WARSHAVSKY: Oh, I'm sorry. Humberto, please
12 furnish to the jury.

13 Done?

14 OK. One step ahead of me.

15 Q. This is where you were requesting the names, and I think
16 earlier you noted that someone named Makisa had responded,
17 correct?

18 A. Yes.

19 Q. And actually, if we can go down, I guess, to the Makisa
20 response. You see it on the page. Can you maybe blow it up a
21 little bit.

22 Clearly that same day she wrote back to you
23 MetaBirkin, correct?

24 A. Yes.

25 Q. And earlier when you spoke, you said the reason that you

N21sHER6

Estival - Cross

1 didn't provide something to Makisa was because you received a
2 response on Instagram, is that correct?

3 A. Yes.

4 Q. Do you remember I asked you about this at your deposition?

5 A. Yes.

6 Q. OK. And do you remember what you responded at your
7 deposition?

8 A. Um, I think I responded incorrectly, but I looked after the
9 deposition to verify.

10 Q. So at your deposition when you were testifying under oath,
11 what you did you say to us?

12 A. I would have to get a reminder. I think I said that --

13 Q. We'll show it to you.

14 Can we furnish the witness and his counsel with his
15 deposition testimony.

16 So do you see where I'm looking at line 15 to 18?

17 A. Yes.

18 MR. HARRIS: Do you have a hard copy?

19 MR. WARSHAVSKY: Do I have a hard copy?

20 MR. HARRIS: I'm sorry. What page is this, please?

21 BY MR. WARSHAVSKY:

22 Q. What response did you give to me at your deposition?

23 A. We ended up coming up with a name prior to this actually.
24 We had a few variations.

25 Q. So now you're saying that that testimony was wrong?

N21sHER6

Estival - Cross

1 A. That testimony was incorrect. I looked it up after.

2 MR. WARSHAVSKY: OK. If we can go back to the Twitter
3 post, please.

4 The Twitter post -- sorry. If we can go to
5 *JessLozano*. I don't know how to pronounce it.

6 Down a little. There you go.

7 Can you please blow up the two November 3 ones.

8 Q. This user -- I'm not sure how to say that -- wrote back and
9 in the first post on November 3 said Not Your Mom's Birkin.

10 Do you see that?

11 A. Yes.

12 Q. OK. And ultimately you used Not Your Mother's Birkin as
13 your slogan on your website, correct?

14 A. Yes.

15 Q. Did you give this person a MetaBirkin?

16 A. No, because it was not the name.

17 Q. Oh, because it was Not Your Mother's Birkin rather than Not
18 Your Mom's Birkin?

19 A. Yes. And we also knew of this Slogan. Tiffany's was using
20 it at the time to describe Not Your Mother's Tiffany.

21 Q. I see. So, well, all right. We can close this exhibit.

22 So you used the same -- I'm sorry.

23 Who was using it?

24 What was the name of that person?

25 A. Tiffany's.

N21sHER6

Estival - Cross

1 Q. You were using the Tiffany's logo, you just changed it to
2 Birkin?

3 A. There was no logo.

4 Q. I'm sorry. Slogan?

5 A. Um, the slogan is people attach not your mother's to a lot
6 of things, like, not your mother's cheesecake or not your
7 mother's cooking or something like that. It's a common saying,
8 but I've seen the ads from Tiffany's most recently.

9 Q. So Tiffany's doesn't an ad for itself Not Your Mother's
10 Tiffany?

11 A. I think so. It's something like that.

12 Q. OK. But you didn't say Not Your Mother's MetaBirkin, you
13 said Not Your Mother's Birkin, correct?

14 A. Yes.

15 MR. WARSHAVSKY: OK. So let's take a look at your
16 website for a second.

17 You know what, if we can look at actually Plaintiff's
18 Exhibit 227. I'm going to try to cut through a few of these.
19 If we can blow it up a little bit.

20 You know, I'm sorry. Has this been admitted? It has,
21 right? OK. So the jury should be able to see it.

22 BY MR. WARSHAVSKY:

23 Q. This is the website we looked at before?

24 A. Yes.

25 Q. Can you tell me what this means where it says mint for

N21sHER6

Estival - Cross

1 .1 ETH?

2 A. To purchase it for .1 ETH.

3 Q. OK. All right. If someone were to press that button with
4 a mouse or something or on your phone with a finger?

5 A. Yeah, it's a button.

6 Q. OK. And where does that go to?

7 A. Um, it opens a minting interface with whatever wallet you
8 have.

9 Q. OK. And you didn't do the minting yourself on your own
10 website, is that correct; it was a different website this went
11 to?

12 A. Um, no. We did it on this website.

13 Q. OK. So this -- so the minting is actually on the website
14 itself?

15 A. Um, not really. So it's done on a website, but to interact
16 with any Web3 website, you have to have a wallet, which is
17 usually an extension on your browser or your phone, which is an
18 interface that allows you to mint off of a website.

19 Q. OK. So but your site was the gateway for that, it wasn't
20 another site?

21 A. Yes, it was on our site.

22 Q. And just so I understand because you talked a little bit
23 about your own MetaBirkins.

24 Did you mint any of the MetaBirkins NFTs yourself?

25 A. I believe I minted one.

N21sHER6

Estival - Cross

1 Q. Isn't it true that one of the MetaBirkins was transferred
2 to you after the mint?

3 A. Yes.

4 Q. And before you talked about three different MetaBirkins
5 that were minted at the beginning, and I guess what would you
6 say, weren't given to random people, is that correct?

7 A. Weren't given to random people?

8 Q. Let me ask it better.

9 I think you said you could account for three
10 MetaBirkins; one that went to you, two that went to
11 programmers, is that correct?

12 A. Yeah, I think --

13 Q. OK.

14 A. Yeah, so it went to a member of my team.

15 Q. OK. Two of them went to members of your team?

16 A. Yep.

17 Q. And one went to you?

18 A. Yes.

19 Q. And those were actually NFTs, one, two, and three, correct?

20 A. Um, I'm not positive of the number, to be honest.

21 Q. OK. Which one do you own?

22 A. I think I have one.

23 Q. OK. But you're not sure if two and three went to your
24 workers?

25 A. Um, it did, but I'm not sure if those were the ones that

N21sHER6

Estival - Cross

1 were transferred.

2 Q. Well, did NFT number two and NFT number three --

3 Let's start with just one. Did NFT number two go to
4 one of the people that worked with you?

5 A. Yeah.

6 Q. Did NFT number three go to one of the people that worked
7 for you?

8 A. Yes, but I'm not saying which ones were transferred. The
9 question prior to that was about transferring them out or
10 transferred to your wallet, and I'm not sure if two and three
11 were transferred to my wallet.

12 Q. I wasn't -- I appreciate that. I'm going -- I wasn't
13 referring to the prior question. Thank you.

14 So, but the point is that while everybody else got
15 random assignments, you and these two developers got numbers
16 one, two, and three, is that correct?

17 A. No, they mint chronologically.

18 Q. I see. And you and the developers minted first, second,
19 and third?

20 A. Yes, to test the contract.

21 MR. WARSHAVSKY: OK. If we can show Mr. Rothschild,
22 defendant's counsel, and the court Plaintiff's Exhibit 313.

23 Q. This is a text message among you, Mr. Sachs, Mr. Lee, both
24 Mr. Sachs and Mr. Lee.

25 Do you see that?

N21sHER6

Estival - Cross

1 A. Yes.

2 Q. You produced that in this case?

3 A. Yes.

4 MR. WARSHAVSKY: We would offer into evidence subject
5 to the same limitations, your Honor.

6 THE COURT: Yes.

7 MR. HARRIS: Same objection, your Honor.

8 THE COURT: Received subject to the same limitation.

9 MR. WARSHAVSKY: OK.

10 (Plaintiff's Exhibit 313 received in evidence)

11 BY MR. WARSHAVSKY:

12 Q. If we turn to page three. You can look at two and three
13 just to give yourself, refresh your recollection.

14 Do you see on page three you're giving -- now if we
15 can show the witness pages three and four --

16 OK. So here is a text message from you to Mr. Sachs
17 with a link and what looks to be a screenshot, is that correct?

18 A. Yes.

19 Q. OK. This is where you tell Truman Sachs to go mint?

20 A. Yes.

21 Q. OK. So is this the point at which an NFT purchaser would
22 actually purchase a MetaBirkin NFT?

23 A. Can you rephrase the question?

24 Q. Well, let me ask it just about Mr. Sachs. Is this the
25 point when Mr. Sachs goes to mint, is that the point in time at

N21sHER6

Estival - Cross

1 which he would purchase his MetaBirkins NFT when he went to
2 mint?

3 A. Yes.

4 Q. OK. And that's the same for everybody?

5 A. Um-hmm.

6 Q. OK. And this is what -- this screenshot is what that
7 person would see?

8 THE COURT: I'm sorry. The witness simply said
9 um-hmm. You have to say yes or no. I take it that was a yes?

10 THE WITNESS: Oh, yes, yes. Sorry.

11 BY MR. WARSHAVSKY:

12 Q. If we can show the image that's attached to that?

13 A. Wait, sorry. I wasn't saying yes to the question. I can't
14 see the screenshot or the picture.

15 Q. I realized the same thing. If we can go to the --

16 OK. So this is, again, this is the way these were
17 produced. I'm not sure if it was you, your vendor, how it
18 happened, but the images come at the end of the text chain,
19 right, which we've discussed before.

20 This is what the mint screen would look like?

21 A. Yes.

22 Q. OK. And this doesn't say secure the art, does it?

23 A. No.

24 Q. It doesn't say secure the MetaBirkin, does it?

25 A. No, but it's a play on words.

N21sHER6

Estival - Cross

1 Q. It says secure the bag?

2 A. Um-hmm, yes.

3 Q. And is there a disclaimer here?

4 A. To disclaim what?

5 Q. Is there any sort of disclaimer here?

6 A. No.

7 Q. And on the mint site itself, where it said MetaBirkins, was
8 there any disclaimer saying it was not affiliated with Hermès
9 at this time?

10 A. Not at this time.

11 Q. OK. This is the image -- just because I'm not sure, there
12 is a little colloquy with one of the answers -- this is what
13 any purchaser of a MetaBirkin would see when they went to the
14 site?

15 A. If they were whitelisted.

16 Q. If they were whitelisted. OK.

17 All right. Do you know how many people actually
18 minted your MetaBirkin NFTs?

19 A. Like, how many human beings?

20 Q. Yes.

21 A. 100.

22 Q. OK. Do you know that for a fact, or are you just guessing?

23 A. Since there is 100, then yeah, it would be 100 people.

24 Maybe a little bit less because the team minted two.

25 Q. So when someone minted an NFT, they become the holder of

N21sHER6

Estival - Cross

1 the NFT, is that what you were saying?

2 A. Like, the owner.

3 Q. The owner?

4 A. Yes.

5 Q. OK. So do you know any of the owners of the MetaBirkin
6 NFTs?

7 A. Just the ones that are, like, friends and family.

8 Q. OK. So who is that?

9 A. It's about 20 people.

10 Q. Was it about, or can you name them quickly?

11 A. Um, I can name them. My fiancée, Truman, his brother,
12 Garrett Micah, celebrities, Future, La La. Um, that's all I
13 can think of right now.

14 Q. OK. So including you and your developers, it seems like
15 there are about ten people that you can think of right now,
16 correct?

17 A. About.

18 Q. OK. When you said celebrities, the celebrities you're
19 talking about are Future and La La?

20 A. There's more, but I just can't think of them right now.

21 Q. You can't think of them now. OK.

22 Now, you think there about up to ten other holders
23 that you may know or you may have known at one time?

24 A. About, yeah.

25 Q. Of the other 80, do you know who they are?

N21sHER6

Estival - Cross

1 A. Just by their, like, username in Discord.

2 Q. Do you know who they are?

3 Do you know their names?

4 A. Not their legal names.

5 Q. Do you know their phone numbers?

6 A. I don't think so, no.

7 Q. Do you know their e-mail addresses?

8 A. No, just their wallet.

9 Q. OK. Well, do you know where they live?

10 A. No.

11 Q. OK. When you say a wallet, you're talking about a

12 30-character string on the blockchain?

13 A. Yes.

14 Q. So would you agree with me that these people are either
15 anonymous or pseudonymous holders?

16 A. From their legal name, but I interacted with them on a
17 daily basis in Discord.

18 Q. I'm not sure I understood your answer. I asked you would
19 you agree with me that they are anonymous or pseudonymous.

20 You don't know their names but you might know a
21 30-character string?

22 A. I also know their Discord.

23 Q. So you might know their Discord?

24 A. Yes.

25 Q. And when you say you know their Discord, you mean a user

N21sHER6

Estival - Cross

1 handle?

2 A. User handle.

3 Q. On Discord?

4 A. On Discord.

5 Q. And you know all 80 of them?

6 A. Not all 80, just who verifies.

7 Q. OK. And about how many verify?

8 A. I'm not sure.

9 Q. OK. So would it be more than ten people that were
10 verified?

11 A. Yes.

12 Q. More than 20?

13 A. Um, I would say about maybe half.

14 Q. So up to 50?

15 A. Up to 40.

16 Q. Up to 40. OK.

17 And have you ever spoken to these people over the
18 phone?

19 A. No.

20 Q. OK. Did you ever text message with any of them?

21 A. No.

22 Q. OK. So yesterday -- I'm sorry, not yesterday -- on Monday
23 when Mr. Millsaps was giving his opening statement, he said
24 nobody was confused about what they were buying when they
25 bought the MetaBirkins NFTs and artworks.

N21sHER6

Estival - Cross

1 Did he speak -- do you know whether he spoke to any of
2 these people?

3 A. Um, no.

4 Q. OK. Do you know if he texted with them or otherwise spoke
5 to them, otherwise was in communication with them?

6 A. No.

7 Q. Was he in touch with them on Discord?

8 A. No.

9 Q. OK. So after minting, the MetaBirkins went on blockchain,
10 correct?

11 A. Yes.

12 Q. And they were added to NFT marketplaces like OpenSea and
13 Rarible that we've discussed?

14 A. Yes.

15 Q. And they were delisted from OpenSea and Rarible, is that
16 correct; they were delisted from a few?

17 A. Yes.

18 Q. But they are still available on LooksRare?

19 A. Yes.

20 MR. WARSHAVSKY: I would like to show Plaintiff's
21 Exhibit 386, please.

22 I'm sorry, just to the -- I keep doing this -- the
23 witness, judge, and defense counsel.

24 Q. Have you seen this document before?

25 A. Yes.

N21sHER6

Estival - Cross

1 Q. Are those the 100 MetaBirkin NFTs?

2 A. This is six and a half of them, but they should all show in
3 there.

4 Q. OK. If we can scroll to the next page for the witness.
5 It's a 12-page exhibit, right?

6 OK. So does this look like the NFT marketplace
7 LooksRare for the MetaBirkins NFTs?

8 A. Yes.

9 Q. And you linked to this website from the *MetaBirkins.com*
10 website, is that correct?

11 A. At a certain point, yes.

12 MR. WARSHAVSKY: All right. Your Honor, we would move
13 this into evidence.

14 MR. HARRIS: No objection, your Honor.

15 Q. So the MetaBirkins can be bought and sold here, is that
16 correct?

17 A. Yes.

18 Q. Is there a disclaimer on this site?

19 A. No.

20 MR. WARSHAVSKY: If we can go to Plaintiff's Exhibit
21 230, please, to show the witness, defense counsel and the
22 court.

23 Q. Do you know what this is, Mr. Rothschild?

24 A. Rarible.

25 Q. This is the way the site previously looked, is that right?

N21sHER6

Estival - Cross

1 A. Yes.

2 Q. And these are the MetaBirkin NFTs, correct?

3 A. Yes.

4 Q. And this is a marketplace for the MetaBirkins NFTs,
5 correct?

6 A. Yes.

7 Q. And you linked this website from the *MetaBirkins.com*
8 website, is that correct?

9 A. At a certain point, yes, when it was listed on there.

10 MR. WARSHAVSKY: OK. We'll move this into evidence.

11 MR. HARRIS: No objection.

12 THE COURT: Received.

13 (Plaintiff's Exhibit 230 received in evidence)

14 (Continued on next page)

N21nher5

Estival - Cross

1 MR. WARSHAVSKY: Your Honor, there was a question
2 about whether you received the previous exhibit. I thought you
3 had, but it is unclear.

4 MR. HARRIS: There was no objection, your Honor.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 386 received in evidence)

7 MR. WARSHAVSKY: Sorry about that.

8 BY MR. WARSHAVSKY:

9 Q. So looking at this, was this a description that was used
10 across all of the NFT marketplaces that sold the MetaBirkins?

11 A. No.

12 Q. Okay. Where was it different? I am talking about the
13 description along the top.

14 A. The digital art project by Mason Rothschild.

15 What was the question?

16 Q. Was this a description -- the MetaBirkins name
17 @MetaBirkinsNFT, I realize that the sale prices might have
18 changed, but is this generally what the different NFT
19 marketplaces looked like -- the description of MetaBirkins on
20 the NFT marketplaces looked like?

21 A. I think so. Yes.

22 Q. Once again, on this one there's no disclaimer, correct?

23 A. Yes.

24 Q. All right. For each of these -- I think we discussed it
25 earlier, but you received a royalty from the resale on any of

N21nher5

Estival - Cross

1 these NFT marketplaces, is that correct?

2 A. Yes.

3 Q. And was that a consistent rate across the different
4 marketplaces?

5 A. I think seven and a half across.

6 Q. Okay. Thank you.

7 You also ran -- we have talked a little bit about it,
8 but just to make clear, you ran a number of social media
9 accounts, correct?

10 A. Like four --

11 Q. Let me ask a better question. You ran a number of social
12 media accounts to promote the MetaBirkins, correct?

13 A. Yes.

14 Q. What were they?

15 A. MetaBirkins on Twitter and MetaBirkins on Instagram.

16 Q. And also Discord?

17 A. Oh, yeah.

18 Q. Okay. Did you also promote the MetaBirkins on your own
19 personal accounts on Twitter and Instagram?

20 A. Yes.

21 MR. WARSHAVSKY: Okay. I would like to show now
22 Plaintiff's Exhibit 242 to the witness, defense counsel, and
23 the Court.

24 BY MR. WARSHAVSKY:

25 Q. This is a text exchange that was produced by you in

N21nher5

Estival - Cross

1 discovery, correct?

2 A. Yes, but I can't tell who it's to.

3 Q. The redaction on some of these are to protect personal
4 information and are made by your team actually. We agree with
5 them by the way. I don't mean to --

6 MR. WARSHAVSKY: Is there one you can furnish the
7 witness that doesn't have the redactions, so he can see who
8 it's with.

9 BY MR. WARSHAVSKY:

10 Q. You will see here it is a text between you and just a phone
11 number.

12 A. Yes, I just don't know what the phone number is.

13 Q. You don't know who that refers to?

14 A. I don't know phone numbers really.

15 MR. WARSHAVSKY: Okay. If we can scroll down.

16 BY MR. WARSHAVSKY:

17 Q. Does looking at this give you any further indication of who
18 this could be?

19 A. I still don't know who it is.

20 Q. Okay. Is it possible that you previously might have
21 thought this was somebody named NFT Kings?

22 A. Oh, yes.

23 Q. Okay. Could this be NFT Kings?

24 A. Possibly, yes.

25 Q. Okay. Just -- who is --

N21nher5

Estival - Cross

1 MR. WARSHAVSKY: So if we could put back up the
2 redacted exhibit.

3 BY MR. WARSHAVSKY:

4 Q. Who is NFT Kings?

5 A. He's an NFT influencer.

6 Q. This is a text exchange you produced in this, correct?

7 A. Yes.

8 MR. WARSHAVSKY: We would offer it into evidence
9 subject to the same restriction, your Honor.

10 MR. HARRIS: No objection, your Honor.

11 MR. WARSHAVSKY: Your Honor, can we refer it to the
12 jurors.

13 THE COURT: Yes.

14 MR. WARSHAVSKY: Could we turn please to page 4 of
15 this document.

16 THE COURT: I should have said "received."

17 (Plaintiff's Exhibit 242 received in evidence)

18 BY MR. WARSHAVSKY:

19 Q. I'm sorry, pages 3 and 4, so you can take a look at it. So
20 here you are having a discussion with NFT Kings?

21 A. Yes.

22 Q. And are these generally discussions about how the
23 MetaBirkins are being received by whales?

24 A. Can you ask a --

25 Q. Maybe that is a tough one, since I don't know this.

N21nher5

Estival - Cross

1 MR. WARSHAVSKY: Maybe let's look at page 4 and 5.

2 BY MR. WARSHAVSKY:

3 Q. Here NFT Kings is asking about your royalty rate, is that
4 right?

5 A. Yes.

6 Q. And he asked you for after sale and you say seven and a
7 half percent, correct?

8 A. Yes.

9 Q. Then he asks you, "Personally or including OS fee?"

10 Is "OS" OpenSea?

11 A. Yes.

12 Q. You say, "Personally so 10," right?

13 So that means consumers pay a 10 percent royalty and
14 two and a half goes to OpenSea, and seven and a half goes to
15 you.

16 A. Yes.

17 Q. If we look at your last text here, can you read that?

18 A. Oh, Luxury tax -- luxury product luxury tax, maybe.

19 Q. Okay. You are talking about the MetaBirkins there as a
20 luxury product?

21 A. Yes.

22 MR. WARSHAVSKY: Okay.

23 Can we turn to Plaintiff's Exhibit 100, please.

24 This is a very long exhibit, so I would ask to go to
25 page 502.

N21nher5

Estival - Cross

1 BY MR. WARSHAVSKY:

2 Q. Is page 502 a tweet by you?

3 A. Yes.

4 MR. WARSHAVSKY: Okay. We would move page 502 of this
5 exhibit, so just the pages on the screen into evidence.

6 MR. HARRIS: May I have one second, your Honor?

7 THE COURT: Yes.

8 MR. HARRIS: No objection to the page, your Honor.

9 THE COURT: Page 502 is received.

10 (Plaintiff's Exhibit 100, page 502 received in
11 evidence)

12 MR. WARSHAVSKY: Can you please -- well, can we
13 furnish it to the jury.

14 BY MR. WARSHAVSKY:

15 Q. In your tweet here you are talking about rose gold, do you
16 see that?

17 A. Yes.

18 Q. What does it mean that rose gold is the rarest hardware in
19 the MetaBirkins collection?

20 A. There's the least amount of them.

21 Q. Okay. And what is a hardware collection?

22 A. Just like the little lock that you see.

23 Q. So you're referring to the lock?

24 A. Yeah.

25 Q. Okay. And that's kind of like an Hermès rose gold

N21nher5

Estival - Cross

1 hardware, correct?

2 A. I am not sure if they make rose gold.

3 Q. But you are referring to hardware the same way Hermès might
4 when you are talking about the lock?

5 A. Any metal piece.

6 MR. HARRIS: Objection to that, your Honor.

7 THE COURT: Sustained.

8 BY MR. WARSHAVSKY:

9 Q. Is there gold in this NFT?

10 A. Is there what?

11 Q. Is there actual gold in this NFT?

12 A. No, it is digital.

13 Q. So it is just a color?

14 A. Yes, rose gold is a color.

15 Q. It's a color meant to look like rose gold?

16 A. Yes.

17 Q. Do you know whether or not Hermès sells rose gold hardware
18 on its bags?

19 A. I am not sure.

20 Q. Okay. Do you know whether Hermès refers to something like
21 the lock as the hardware on the bag?

22 A. Most people do.

23 Q. Most people do?

24 A. Yes.

25 Q. So -- okay. That's how most people would talk about

N21nher5

Estival - Cross

1 real-world products?

2 A. Yeah, hardware.

3 Q. Okay. And when you say rose gold is rare, what do you mean
4 by that if it is just a color?

5 A. There's the least amount of them, that I said earlier.

6 Q. Well, fair enough.

7 I guess what I'm trying to understand is, when you say
8 there's the least amount, do you mean the least amount in this
9 picture or do you mean the least amount -- let me ask it a
10 better way. I am not doing a good job here.

11 Let me try to make it easier.

12 Is the rose gold made with the same software as
13 everything else?

14 A. Yes.

15 Q. It is just a color on the palette of all colors that might
16 be available to use in the same software?

17 A. Ah --

18 Q. No?

19 A. Can you ask you it --

20 Q. Sure. Is there any -- let me break it down.

21 Is the rose gold color made by the same software as
22 everything else?

23 A. Yes.

24 Q. In that software, is it harder to use the rose gold?

25 A. No.

N21nher5

Estival - Cross

1 Q. Could someone make a product of rose gold just as easily as
2 they could, say, yellow?

3 A. Yes. It's a color.

4 Q. So what about the rose gold here makes it rare?

5 A. I'm saying it's the least amount in the collection. It
6 appears the least amount of times out of the hundred.

7 Q. Okay. So is that meant --

8 MR. WARSHAVSKY: Okay. I understand.

9 If we could go to Plaintiff's Exhibit 306 to furnish
10 to the Court and the witness and defense counsel.

11 This exhibit has already been admitted for limited
12 purposes I think. So per the -- this has been received for the
13 limited purpose as discussed.

14 If we could turn to page 3, please.

15 All right.

16 BY MR. WARSHAVSKY:

17 Q. So the date on this I think you saw was November 30?

18 MR. WARSHAVSKY: Can you go back to the first page so
19 we can confirm that.

20 BY MR. WARSHAVSKY:

21 Q. November 30? Do you agree with me?

22 A. Yes.

23 Q. This is the text exchange between you and Alex and Truman
24 Sacks, correct?

25 A. Yes.

N21nher5

Estival - Cross

1 Q. By the way, I see that this person Alex Sacks. Alex Sacks
2 and Moshe Sacks, is that the same person?

3 A. Yes.

4 Q. When we've seen three names Sacks, there's Truman Sacks,
5 and Alex and Moshe Sacks are the same person, correct?

6 A. Yes, he just goes by Alex.

7 Q. So sometimes you see it as Alex; sometimes you see it as
8 Moshe?

9 A. Yes.

10 Q. Okay. Got it.

11 MR. WARSHAVSKY: So we could turn to page 3.

12 BY MR. WARSHAVSKY:

13 Q. Here you are discussing another launch of the MetaBirkins,
14 correct?

15 A. Yes.

16 Q. And you said, "so people gifted" -- at the bottom you say
17 -- "and we can do a TikTok campaign.

18 Do you see that?

19 A. Yes.

20 Q. What is a TikTok campaign?

21 A. Just post something with, like, a hashtag.

22 Q. That is another way to market products over social media?

23 A. Like, yeah, to make it viral.

24 Q. So promotion maybe is a better way to say it?

25 When you say "make it viral," you mean so lots of

N21nher5

Estival - Cross

1 people see it?

2 A. Yes.

3 Q. Okay. What does a hashtag mean?

4 A. A hashtag is -- a hashtag is like -- if you click on a
5 hashtag, it takes you to the same conversation that people are
6 having about a certain thing that they hashtag. So it's
7 like --

8 Q. It is a way to organize a campaign?

9 A. No. I mean, it's just like -- it's only use is not just
10 that -- it is just a reference point for everybody to -- if you
11 want to have a conversation about something, you utilize a
12 hashtag to find people that are having that same conversation.

13 Q. Okay. So the hashtag campaign you were thinking of here is
14 what?

15 A. Finally got my Birkin.

16 Q. Finally got my Birkin; not finally got my MetaBirkin,
17 correct?

18 A. Correct.

19 Q. When you say "finally" here -- well, strike that.

20 Do you buy NFTs?

21 A. Yes.

22 Q. Okay. There was discussion both by you and I think by the
23 expert about the NFT market, right?

24 Do you buy a lot of NFTs or no?

25 A. That's kind of up for debate. I mean, probably not as much

N21nher5

Estival - Cross

1 compared to the next person, but I think I have like a hundred.

2 Q. Okay. About a hundred more than me.

3 Have you ever been bought a Bored Ape Yacht Club NFT?

4 A. Yes.

5 Q. Is Bored Ape Yacht Club a popular NFT brand?

6 A. It is a popular -- it's the best selling NFT project.

7 Q. Okay. Is it the most well known do you think?

8 A. It is up for debate, but to me between that and like Punks.

9 Q. Punks. Okay. What about Doodle?

10 A. Also a very popular one.

11 Q. Have you ever bought a Doodle NFT?

12 A. I did for a giveaway, but not for my own self.

13 Q. Did you ever collaborate with either Doodle or Bored Ape?

14 A. No.

15 MR. WARSHAVSKY: If we please show Mr. Rothschild, his
16 counsel, and the Court Plaintiff's Exhibit 126.

17 BY MR. WARSHAVSKY:

18 Q. This is a tweet by you, is that correct?

19 A. Yes.

20 MR. WARSHAVSKY: Okay.

21 We would offer this into evidence.

22 MR. HARRIS: No objection.

23 THE COURT: Received.

24 (Plaintiff's Exhibit 126 received in evidence)

25 BY MR. WARSHAVSKY:

N21nher5

Estival - Cross

1 Q. In your profile picture, is that your Bored Ape Yacht Club
2 NFT?

3 A. This is an old photo, but yes.

4 Q. Okay. Did you own the Bored Ape Yacht Club NFT at the
5 time?

6 A. Yes.

7 Q. Can you read the tweet.

8 A. "The NFT trinity, Bored Ape Yacht Club, Doodle MetaBirkins,
9 MetaBirkins2Pluto."

10 Q. I'm sorry? MetaBirkins2Pluto.

11 I didn't see that. Thank you.

12 A. Yes.

13 Q. What is that hashtag, MetaBirkins2Pluto.

14 A. Just a hashtag I wrote.

15 Q. So did you consider MetaBirkins NFTs to be on the same
16 level as Bored Ape Yacht Club and Doodle?

17 A. I was referring to Future's posts, so he posts a Doodle,
18 which is that little balloon thing at the bottom, the
19 MetaBirkin in the middle, and I think there is a Bored Ape
20 right before the Doodle.

21 Q. I think I was -- so the NFT trinity, what did you mean by
22 NFT trinity? Why did you talk about those three sets of NFTs?

23 A. At the time we were like the top selling or trending
24 collections on OpenSea.

25 Q. Okay. Okay. So on that -- on December 7, those were the

N21nher5

Estival - Cross

1 three biggest selling NFT projects?

2 A. Not biggest selling, the biggest trending, so most like
3 attention on them.

4 Q. I'm sorry. Where was it the most trending NFT?

5 A. On OpenSea they have a trending page, and then they have
6 like a sales page.

7 Q. I see.

8 A. They're different.

9 Q. So trending is different from sales, but it is still on the
10 marketplace?

11 A. Yeah.

12 Q. Okay. Thank you.

13 So you were using the Bored Ape as your -- at least at
14 this time, as your profile picture?

15 A. Yes.

16 Q. Is that the right word?

17 Didn't you promote -- did you promote MetaBirkins as
18 useable for your -- for other people's profile photos?

19 A. One more time? Sorry.

20 Q. Did you suggest that -- did you promote the MetaBirkins by
21 suggesting that other people use the MetaBirkins as their
22 profile photo?

23 A. Yes.

24 MR. WARSHAVSKY: Okay.

25 Can we turn to Plaintiff's Exhibit 134.

N21nher5

Estival - Cross

1 Just to the witness, and defense counsel and the
2 Court, please.

3 BY MR. WARSHAVSKY:

4 Q. So is this -- can you tell us what -- is this a tweet?

5 What are we looking at? It looks like a screen shot
6 from you.

7 You produced this in this case, right?

8 That's what the Bates number shows.

9 A. Yeah, yeah. Is it a tweet? Yeah, it is a tweet. Or it is
10 a draft of a tweet, yes.

11 Q. So this is a draft of a tweet?

12 A. Yes, because it still says tweet at the top, but I think I
13 tweeted it.

14 Q. Okay. And here you say "Do as @LanaRhodes does" --

15 A. Yes.

16 Q. -- "and change your profile."

17 MR. WARSHAVSKY: I'm sorry. Can you -- I didn't even
18 ask to -- I'm sorry.

19 I am trying to go fast.

20 Your Honor, we would move this into evidence.

21 MR. HARRIS: No objection, your Honor.

22 THE COURT: Received.

23 (Plaintiff's Exhibit 134 received in evidence)

24 MR. WARSHAVSKY: Okay. Now if you could expand it
25 back.

N21nher5

Estival - Cross

1 BY MR. WARSHAVSKY:

2 Q. And who is -- I'm sorry -- I can't -- is this the same name
3 here, the two --

4 A. Huh?

5 Q. I see you have a @ and then you have something below.

6 Is that the same person?

7 A. The bottom is a screen shot.

8 Q. It is a screen shot?

9 A. Of an Instagram, at the Instagram profile.

10 Q. Here you are suggesting -- the tweet your intending to post
11 was for people to change their profile photo?

12 A. Yes.

13 Q. Okay.

14 A. So Lana at the time changed her profile picture, and I
15 thought it was kind of a cool idea, so I told everybody to do
16 it.

17 Q. Is this a friend of yours?

18 A. She is now a friend, yes.

19 Q. Okay. Did you know her at the time?

20 A. She reached out to me.

21 Q. Okay.

22 A. So, yeah.

23 Q. Is she an influencer? Well, who is Lana Rhoades?

24 A. She is an adult film star.

25 Q. Oh, okay.

N21nher5

Estival - Cross

1 A. Sorry.

2 Q. Thank you.

3 A. I'm sorry.

4 MR. WARSHAVSKY: We are always told not to ask
5 questions we don't know the answer to.

6 If we can now turn to Plaintiff's Exhibit 144.

7 MR. WARSHAVSKY: Your Honor, may I take a second to
8 get a drink of water.

9 I'm sorry.

10 THE COURT: Don't ask for the video.

11 MR. WARSHAVSKY: I just composed myself. All right.

12 Turn to Plaintiff's Exhibit 144. Can you show it to
13 the witness, defense counsel, and the Court, please.

14 BY MR. WARSHAVSKY:

15 Q. Is this a tweet by you?

16 A. Yes.

17 MR. WARSHAVSKY: Okay. We would offer it into
18 evidence.

19 MR. HARRIS: No objection.

20 THE COURT: Received.

21 (Plaintiff's Exhibit 144 received in evidence)

22 BY MR. WARSHAVSKY:

23 Q. Can you read this text for us, just the first sentence --
24 maybe the whole thing and then explain it -- well, I will read
25 it. "MetaBirkins are the key to unlocking all my future

N21nher5

Estival - Cross

1 projects."

2 What does that mean?

3 A. People who have a MetaBirkin would get white-listed for
4 anything that I made in the future.

5 Q. And then you say, "Endless value for the people who believe
6 in me and my work."

7 A. Yeah.

8 Q. So when you say the key to unlocking all your future
9 projects, when you say anybody who owns a MetaBirkin will
10 get -- well, why don't I ask you.

11 What does it mean -- if somebody wants a MetaBirkin
12 and they are guaranteed a white list, what does that mean?

13 A. They get access for anything I make.

14 Q. Of any project ever?

15 A. Pretty much. That's what I am saying here.

16 Q. When you say "guaranteed airdrops," what does that mean?

17 A. That just means free stuff.

18 Q. Okay. So I think you said earlier today that MetaBirkins
19 only exists in two dimensions.

20 Do you remember that?

21 A. Yes.

22 Q. In fact, I think that was part of the opening statement by
23 counsel as well, correct?

24 A. Correct.

25 Q. Okay. Do you remember on Monday Dr. Mentzer referred to

N21nher5

Estival - Cross

1 something called Decentralan?

2 A. Yes.

3 Q. What is Decentralan?

4 Do you know Decentralan is?

5 A. Yes.

6 Q. What is it?

7 A. It a virtual world.

8 Q. Is it a metaverse?

9 A. Yeah.

10 MR. WARSHAVSKY: Could we turn to Plaintiff's Exhibit
11 306, which I think has already been admitted.

12 Is plaintiff's 306 admitted?

13 MR. HARRIS: Yes.

14 MR. WARSHAVSKY: If we could show page 27 of
15 Plaintiff's Exhibit 306.

16 Okay. Let's show the witness plaintiff's -- let's see
17 26 as well for context.

18 THE WITNESS: Yes.

19 MR. WARSHAVSKY: Okay.

20 BY MR. WARSHAVSKY:

21 Q. So Moshe Sacks ponders about integrating the MetaBirkins
22 into Decentralan.

23 Do you see that?

24 A. Yes.

25 Q. You respond, "I tried. It would be this ugly voxel

N21nher5

Estival - Cross

1 rectangle hahaha. I need more resolution."

2 Do you see that?

3 A. Yes.

4 Q. Okay. So you are talking about resolution.

5 Now let's go to your next text.

6 You say, "They're technically metaverse ready cause
7 fully 3D."

8 Is that correct?

9 A. Yes.

10 Q. So the MetaBirkins are metaverse ready?

11 A. Not in their current state.

12 Q. Here you said they're technically metaverse ready. What
13 did you mean by technically metaverse ready?

14 A. So, like I said, they're made in a 3D program. But if you
15 are asking me if the MetaBirkins are today, they're 2D images.

16 Q. But this was back --

17 MR. WARSHAVSKY: Can we scroll back a few pages, just
18 so we can get the date.

19 This was on December -- scroll back -- this is -- I'm
20 sorry. I think on page 19 I saw, or 20, I saw that it was
21 December 1.

22 A. Okay.

23 Q. So on December 1, 2021, a little over a year ago --

24 MR. WARSHAVSKY: Let's go back to page 27, please.

25 BY MR. WARSHAVSKY:

N21nher5

Estival - Cross

1 Q. You said they're technically metaverse ready?

2 A. Yes.

3 Q. Okay. So does that mean they were ready technically
4 metaverse ready 13 months ago and they're not technically
5 metaverse ready today?

6 A. No, this is just misspeak by me. But I am saying in their
7 current state a MetaBirkin NFT today is a two dimensional
8 object.

9 Q. I understand that is what you are saying today. I
10 understand you said that and your counsel said that a number of
11 times. I am talking about before this lawsuit, 13 months ago,
12 when you were talking to your two investors, you said
13 they're -- and friends -- you said they're technically
14 metaverse ready because fully 3D.

15 Did they change between December 1, 2021 and today?

16 A. No. I'm speaking directly towards MetaBirkins in their
17 form right now as being metaverse ready. You can put them on
18 your wall in a metaverse, like, as a painting, but -- I mean
19 you can ask the expert as well. They are a 2D image.

20 Q. That is not what you said here, is it?

21 A. Yeah --

22 Q. If you go back a page -- I'm sorry. I interrupted you.

23 A. I understand what you are saying. But I'm saying, like,
24 the build -- what it takes -- everybody I think at this point
25 understands that MetaBirkins are 3D or created in 3D, but like

N21nher5

Estival - Cross

1 I said, the MetaBirkins NFTs themselves are pictures of that 3D
2 image, so they're two dimensional.

3 Q. In response to the question you said, "I tried. It would
4 be ugly."

5 A. Yes.

6 Q. Are you saying the painting -- are you saying the two
7 dimensional painting, if you put it in the metaverse, would be
8 ugly, or are you saying something else?

9 A. Yeah. So it's like a -- a voxel is like this -- like
10 Minecraft or something --

11 Q. Sure.

12 A. So, you know, it's just like a couple of colors or anything
13 like that, and there's no shape to it, so it would just be like
14 a square, or a cube.

15 Q. So when you are saying that -- when you were responding to
16 the question about integrating into Decentralan or Sandbox and
17 said, "So it's tough," you meant it was tough to put it as a
18 picture in Decentralan?

19 A. No, I'm saying like it would be tough to -- to put this 3D
20 so again it's like Minecraft, right? You can see how the
21 difference in, like, a MetaBirkins look is very different, and,
22 one, they're not -- there's no 3D file attached to them, so
23 they can't just be imported into a metaverse as a cube object
24 or a three-dimensional object.

25 Q. That's not what you say at the bottom text --

N21nher5

Estival - Cross

1 A. No.

2 Q. I don't want to go back and forth on this. You say they're
3 technically metaverse ready because fully 3d, and you just told
4 me they are not 3D.

5 A. You're asking me two different questions.

6 Q. I'm sorry. I don't mean to.

7 A. MetaBirkins, the NFT that people own today, and 13 months
8 ago when this text happened, are two dimensional. But the way
9 we created MetaBirkins, which we have said a few times, they
10 are 3D, right?

11 So technically the 3D version that everything kind of
12 stems from is metaverse ready, but MetaBirkins today in their
13 current form and the current -- the form that they have been in
14 since they were minted is not 3D.

15 Q. I think we'll come back to this.

16 Your counsel asked you earlier about I think it was
17 called the Floaties?

18 A. Floaties.

19 Q. Yeah.

20 A. Yeah.

21 Q. And that -- was the event you were describing something
22 that might be called an NFT-gated event?

23 A. It is an arts show and they offer normal tickets and they
24 offer NFT tickets.

25 Q. Have you ever heard the term NFT-gated event?

N21nher5

Estival - Cross

1 A. The term is usually like token-gated, but, yes.

2 Q. So a token-gated event. In a token-gated event, what gets
3 used is an NFT usually?

4 A. What gets used?

5 Q. What kind of token is it for a token-gated event?

6 A. NFT.

7 MR. WARSHAVSKY: Okay.

8 If we could turn back to Exhibit 305 which I think has
9 been admitted into evidence and go to page 10.

10 Is this 305?

11 Is this not admitted?

12 Please take it down.

13 Please take it down.

14 Did you take it down? It's down?

15 I'm sorry. I'm sorry.

16 I thought 305 was in. I'm sorry.

17 So go to the -- what time is it?

18 Let's skip this exhibit and let's try and go to
19 another one.

20 Can you show the witness, the Court, and defense
21 counsel Plaintiff's Exhibit 242.

22 BY MR. WARSHAVSKY:

23 Q. Have you seen this text before?

24 A. This is the one you showed me, right?

25 Q. This is the one we saw before? Okay.

N21nher5

Estival - Cross

1 Is this the same one we showed?

2 A. I think so.

3 MR. WARSHAVSKY: All right.

4 So this has been admitted.

5 Can you go to page 2, please.

6 BY MR. WARSHAVSKY:

7 Q. Can you read here where you say, you said, "So many celebs
8 we had to turn down."

9 What celebrities did you turn down?

10 A. One of them was Leila Cohen, who is the daughter of the
11 owner of the Mets here in New York.

12 There's a few just smaller artists like rappers and
13 stuff that requested, but we opted to give them to the bigger
14 ones since we didn't have a large allocation for friends and
15 family.

16 Q. Okay. So here you are telling NFT Kings that you've turned
17 down celebrities?

18 A. Correct.

19 Q. Okay. And you say, and in this chain you say we got
20 Future -- is this Tyga?

21 A. Tyga.

22 Q. Tyga? Is that how you say it?

23 A. Yeah.

24 Q. Miley Cyrus. Madison Beer.

25 Are these celebrities?

N21nher5

Estival - Cross

1 I know some of them?

2 A. Yes.

3 Q. Future is the rapper. You referred to Tyga. I don't know
4 if I want to do this --

5 A. Yes, rapper.

6 Q. I know who Miley Cyrus is.

7 Madison Beer?

8 A. Pop star.

9 Q. Are those people who have MetaBirkins?

10 A. Everyone aside from Miley.

11 Q. So Madison Beer, Tyga have -- and Future have MetaBirkins?

12 A. Correct.

13 Q. Were those some of the people you couldn't think of before?

14 A. I said Future, but Tyga and Madison.

15 MR. WARSHAVSKY: Okay. If we turn to page 6.

16 All right.

17 BY MR. WARSHAVSKY:

18 Q. If you could read, if you want to see page 5 next to it.

19 We saw page 10 a little bit before.

20 A. Yeah? You said 10?

21 Q. I'm sorry. We saw -- I'm not doing well. We saw page 5
22 before, if we turn to page 6, which is on the right side of
23 your screen.

24 You start the text chain with NFT Kings and then you
25 say, "Can you do one more shill post for me"?

N21nher5

Estival - Cross

1 A. Yes.

2 MR. WARSHAVSKY: Okay. If we keep going -- actually
3 let's leave it there.

4 BY MR. WARSHAVSKY:

5 Q. You say you are a gonna make a big -- a big bag on
6 MetaBirkin?

7 A. Yes.

8 Q. What did you mean by "big bag"?

9 A. He will sell it for a lot.

10 Q. Okay. When you're asking him, you say, "Can you do a shill
11 post for me?" what do you mean by that?

12 A. To tell people about the project again.

13 Q. What would he tell people?

14 A. He did a post, like a link of the MetaBirkin.

15 MR. WARSHAVSKY: Okay. If we go to page 7.

16 THE WITNESS: I'm sorry. I just need the page.

17 BY MR. WARSHAVSKY:

18 Q. Your second text, I realize we all use salty language
19 sometimes. What did you mean by, "You have a gem on your
20 hands"?

21 A. It was a good project.

22 Q. And then your next text says, "Like ultimate shill post"?

23 A. Yes.

24 Q. What is an ultimate shill post as opposed to a regular
25 shill post?

N21nher5

Estival - Cross

1 A. It's like an extra hyped one.

2 Q. An extra hyped one. Okay.

3 What would a shill post -- when you say a post, what
4 do you mean by a post?

5 A. It kind of depends. This person and this text message, or
6 in these text messages is like an NFT influencer. He tells
7 people about cool projects, tells people like, you know, what
8 they should be trying to get, what they shouldn't or what they
9 should be buying and what they, you know, just like any
10 influencer.

11 Q. Like a social media post by an influencer?

12 A. Pretty much, yeah.

13 Q. Could be on TikTok, Instagram, Twitter --

14 A. Correct.

15 Q. -- or whatever one of those social media posts?

16 Okay. Your counsel asked you earlier why you wanted
17 the price to go high. And you said because you just wanted
18 value to collectors?

19 A. I'm sorry. I didn't catch that.

20 Q. Your counsel asked you why you want the price to be high,
21 you said you wanted the value to go up to provide value to
22 collectors.

23 Do you remember that?

24 A. Yes.

25 Q. But you also make royalties, correct?

N21nher5

Estival - Cross

1 A. Yes.

2 Q. You said seven and a half percent correct?

3 A. Yes.

4 Q. You also get some recognition from it, right?

5 The higher the value the more well known you can
6 become, correct?

7 A. For sure.

8 Q. Okay. You might get better prices for your next project,
9 correct?

10 A. Yes.

11 Q. Okay.

12 A. Just growth.

13 Q. Okay. So that might be a reason to do that in addition to
14 driving value for collectors.

15 Now if we turn to -- correct?

16 Do you agree with that?

17 A. I'm sorry. I didn't hear you.

18 Q. Those would be benefits to you as well as to collectors,
19 correct?

20 A. For sure.

21 MR. WARSHAVSKY: Okay. If we could turn to page 8.

22 BY MR. WARSHAVSKY:

23 Q. And you say down here, "Your MetaBirkin will get you 50"
24 and then you say "K."

25 Now, can you tell me what you mean by that?

N21nher5

Estival - Cross

1 A. Could you tell me the date of this?

2 Q. Can we go back to -- I think it was December 1, but I don't
3 want to speculate.

4 Can you go back to the first page, please?

5 A. 12/2.

6 Q. December 2. I'm sorry.

7 A. Okay.

8 MR. WARSHAVSKY: So go back to page 8. I'm sorry.

9 I'm sorry. Yeah. Page 8.

10 Q. You say, "Your MetaBirkin will get you 50."

11 And then the next one says, "K."

12 So is that -- did you mean to say your MetaBirkin will
13 get you \$50,000 or are you saying your MetaBirkin will get you
14 50?

15 A. 50K.

16 Q. So 50K. So you meant money?

17 A. Money.

18 Q. Okay. And why would his MetaBirkin get him 50K?

19 A. Because the demand was high.

20 Q. Okay. So if he resold it?

21 A. If he resold it?

22 Q. Okay.

23 MR. WARSHAVSKY: And if we go to page 9.

24 BY MR. WARSHAVSKY:

25 Q. You write, you start out by, "I need the shill."

N21nher5

Estival - Cross

1 A. Correct.

2 Q. So we keep seeing you are asking about the skill.

3 Why are you telling -- so you went from asking him to
4 skill saying you need it.

5 Why did you need it?

6 A. Well, he requested a white list -- he's an NFT influencer.
7 It's just the same thing. It's just like I gave him a white
8 list spot, and I was like, you should, you should tell people
9 about it, because I gave you a white list spot.

10 Q. Okay. Here is he saying to you he's not -- if we look at
11 this chain, which I think you have been looking at throughout,
12 is he telling you he's not going to give you the post, but
13 there he's saying he's going to give you a story? Is that it?

14 You say, "All right, man."

15 Do you see that part of it?

16 A. Yes.

17 MR. WARSHAVSKY: Okay. Turn to page 10.

18 BY MR. WARSHAVSKY:

19 Q. You say, "I think this is the next big thing. If you knew
20 what I had planned today, you would say yes."

21 What did you mean by "it's the next big thing"?

22 A. The project is the next big thing.

23 Q. Okay. And what did you have planned for the next day?

24 A. It was Future posting it.

25 Q. Okay. Okay. And so you are saying -- and then when you

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Estival - Cross

1 say "you'd say yes," what you are saying is if he knew that
2 another influencer was posting it, he would post as well? Is
3 that what that means to say?

4 A. Repeat that. Sorry.

5 Q. Well, you said, "If you knew what I had planned today you'd
6 say yes."

7 What did you mean by that?

8 A. If you knew I had the plans for the project, you knew you
9 would want to be a part of this.

10 Q. So if he knew that Future was going to post he would want
11 to be a part of it?

12 A. Theoretically, yeah.

13 MR. WARSHAVSKY: Okay.

14 If we turn to page 11.

15 BY MR. WARSHAVSKY:

16 Q. He says -- you have more of a discussion, right?

17 He says, "All right" -- or you say, "All right."

18 He says, "But I need another white list spot."

19 "WL" is white list?

20 A. White list.

21 Q. So he's saying if you want him to do the post, he wants a
22 white list spot, is that correct?

23 A. Yes.

24 Q. Okay. And then he says, "I can't do that for nothing."

25 And you say, "I handed you a 25 -- a 25 to 50K piece."

N21nher5

Estival - Cross

1 What did you mean by that?

2 A. I gave him a white list -- I don't know if they were minted
3 at this point yet. I would have to -- I forget what time we
4 minted and what time we sold. But the day that we minted they
5 were going for 45,000. I think that's what I was referring to.

6 Q. Okay. So you were saying you gave him the white list spot,
7 you wanted him to do -- in exchange you wanted him to do this
8 shill post, and that that white list spot could net him
9 anywhere from 25 to 50,000 dollars?

10 A. Correct.

11 THE COURT: All right.

12 Counsel, I think we've come to as far as we can go
13 today.

14 So, ladies and gentlemen, again, tomorrow we will only
15 go to 1 o'clock, so once again, please be here by 9:30 as you
16 were so kindly today and we will start promptly tomorrow.

17 Have a good evening.

18 (Continued on next page)

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N21nher5

Estival - Cross

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(Jury not present)

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness left the stand)

THE COURT: As far as I know, there's nothing that counsel needs to raise tomorrow morning, so why don't you be here at 9:25.

MR. WARSHAVSKY: Your Honor, there is one issue which we think would expedite things, which was to perhaps provide you with a stipulation about all those same objections, same admissions so that --

THE COURT: Sure.

MR. WARSHAVSKY: Perhaps that process will go more quickly.

THE COURT: Okay. That's fine.

(Adjourned to February 2, 2023, at 9:30 a.m.)

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